

## Durham E-Theses

---

# *TEXTUAL ASPECTS IN TRANSLATING LEGAL TEXTS FROM ARABIC INTO ENGLISH With Reference to Libyan Commercial Law*

IBRAHEM, IBRAHEM,M,MOHAMAD

### How to cite:

---

IBRAHEM, IBRAHEM,M,MOHAMAD (2014) *TEXTUAL ASPECTS IN TRANSLATING LEGAL TEXTS FROM ARABIC INTO ENGLISH With Reference to Libyan Commercial Law*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/3373/>

### Use policy

---

The full-text may be used and/or reproduced, and given to third parties in any format or medium, without prior permission or charge, for personal research or study, educational, or not-for-profit purposes provided that:

- a full bibliographic reference is made to the original source
- a [link](#) is made to the metadata record in Durham E-Theses
- the full-text is not changed in any way

The full-text must not be sold in any format or medium without the formal permission of the copyright holders.

Please consult the [full Durham E-Theses policy](#) for further details.

---

Academic Support Office, Durham University, University Office, Old Elvet, Durham DH1 3HP  
e-mail: [e-theses.admin@dur.ac.uk](mailto:e-theses.admin@dur.ac.uk) Tel: +44 0191 334 6107  
<http://etheses.dur.ac.uk>



**TEXTUAL ASPECTS IN TRANSLATING LEGAL TEXTS FROM  
ARABIC INTO ENGLISH**

**With Reference to Libyan Commercial Law**

**By**

**Ibrahim M Ibrahim**

A thesis presented to the University of Durham in fulfilment of the requirements  
for the degree of Doctor of Philosophy

2014

The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

This copy has been supplied on the understanding that it is copyright material and that no quotation from the thesis may be published without proper acknowledgement.

"The right of Ibrahim M Ibrahim to be identified as Author of this work has been asserted by him in accordance with the Copyright, Designs and Patents Act 1988."



## DEDICATION

I dedicate this thesis to my beloved mother

*Maryam Hassan*

And

To the loving memory of my father

*Al-Mabruk Mohamad*

## **ACKNOWLEDGMENTS**

Thanks and appreciation goes to my supervisor, Professor Paul Starkey, for his supervision, encouragement, and support. He was always there for me, providing great help and support with patience throughout the years of my candidature.

My sincere thanks also go to the MLAC for their great support. Special thanks and gratitude also go also to the Libyan government and our embassy in London for their unlimited support and help during my study.

Special thanks also go to my family, my mother and all brothers and sisters for their great support throughout my studies. I thank also my friends Majid Abid and his family, and all friends for their help and support.

## **ABSTRACT**

This research aims to examine the challenges in translating legal texts with reference to Libyan commercial law. It analyses Libyan legal texts translated into English in terms of lexical, syntactic and textual features in order to identify the similarities and differences between Arabic and English legal texts and to tackle the major translation difficulties that face Libyan translators in the field of legal translation. The research adopts two methods in analysing the data; first, through a contrastive analysis of both Arabic and English legal texts; second, through an empirical study conducted by answering two surveys. The first survey was answered by legal translators and the second by lawyers specializing in legal drafting in Libya.

The first chapter of this thesis highlights the background and the objectives of the research. It also discusses the methodology and data collection. Chapter Two sheds light on the features of both Arabic and English legal discourse and the history of both legal systems. Chapter Three provides the theoretical background. Chapter Four highlights the literature review. Chapter Five discusses the differences and similarities between Arabic and English legal texts. Chapter Six forms a contrastive analysis of translated Libyan legal texts into English. Chapter Seven analyses the results of the surveys. The Final Chapter is the conclusion and suggested recommendations.

The results confirmed that translating legal texts is a difficult task. 76 out of 214 legal texts analysed showed that the translator did not achieve 47% of the intended legal out of 53% achieved meaning. The overall results of the surveys revealed that lexical features come on top of the list as the most difficult to

translate. It also showed that the majority of legal translators in Libya agree that collaborating with lawyers helps to improve the quality of translation.

## TABLE OF CONTENTS

<b>ACKNOWLEDGMENTS .....</b>	<b>iii</b>
<b>ABSTRACT .....</b>	<b>v</b>
<b>TABLE OF CONTENTS.....</b>	<b>vi</b>
<b>TRANSLITERATION SCHEME.....</b>	<b>x</b>
<b>LIST OF ABBREVIATIONS.....</b>	<b>xi</b>
<b>Chapter One .....</b>	<b>- 1 -</b>
<b>1- Introduction .....</b>	<b>- 1 -</b>
<b>1.1 Statement of the Problem.....</b>	<b>- 2 -</b>
<b>1.2 Objectives of the Study .....</b>	<b>- 3 -</b>
<b>1.3 Methodology .....</b>	<b>- 4 -</b>
<b>1.3.1 Theoretical Framework .....</b>	<b>- 4 -</b>
<b>1.3.2 Survey Study .....</b>	<b>- 4 -</b>
<b>1.3.3 Discourse Analysis.....</b>	<b>- 5 -</b>
<b>1.4 Research Data .....</b>	<b>- 7 -</b>
<b>1.4.1 Materials.....</b>	<b>- 7 -</b>
<b>1.4.2 Procedure and Data Collection .....</b>	<b>- 8 -</b>
<b>1.5 Value of the Study .....</b>	<b>- 8 -</b>
<b>1.6 Outline of the Study .....</b>	<b>- 9 -</b>
<b>1.7 Layout of the thesis .....</b>	<b>- 9 -</b>
<b>Chapter Two.....</b>	<b>- 12 -</b>
<b>2. Historical Background .....</b>	<b>- 12 -</b>
<b>2.1 Libyan Law .....</b>	<b>- 12 -</b>
<b>2.2 Islamic Law .....</b>	<b>- 15 -</b>
<b>2.3 Islamic Schools of Law .....</b>	<b>- 15 -</b>
<b>2.4 The Qur'an as a Source of Law .....</b>	<b>- 16 -</b>
<b>2.5 Commercial Law in Islamic Law .....</b>	<b>- 17 -</b>
<b>2.6 English Law .....</b>	<b>- 19 -</b>
<b>2.7 Plain English.....</b>	<b>- 20 -</b>

<b>Chapter Three .....</b>	<b>- 23 -</b>
<b>3. Theoretical Background.....</b>	<b>- 23 -</b>
<b>3.1 Introduction .....</b>	<b>- 23 -</b>
<b>3.2 Equivalence Theory.....</b>	<b>- 25 -</b>
<b>3.3 Functional Language Theory.....</b>	<b>- 30 -</b>
<b>3.4 Culture and Translation Theories .....</b>	<b>- 32 -</b>
<b>3.5 Types of Translation .....</b>	<b>- 33 -</b>
<b>3.6 Translation Strategies .....</b>	<b>- 35 -</b>
<b>3.7 Genre, Discourse and Text.....</b>	<b>- 35 -</b>
<b>3.8 The Need for Integrating the Three Notions .....</b>	<b>- 37 -</b>
<b>3.9 Mason's View of the Context of Translation .....</b>	<b>- 39 -</b>
<b>3.10 Legal Genre .....</b>	<b>- 41 -</b>
<b>Chapter Four .....</b>	<b>- 43 -</b>
<b>Legal Translation.....</b>	<b>- 43 -</b>
<b>4.1 Introduction: .....</b>	<b>- 43 -</b>
<b>4.2 Some Key Studies of Legal Texts .....</b>	<b>- 45 -</b>
<b>4.3 Law as a Specialised Language.....</b>	<b>- 50 -</b>
<b>4.4 Legal Text-Types.....</b>	<b>- 51 -</b>
<b>4.5 Features of Legal Discourse .....</b>	<b>- 54 -</b>
<b>4.5.1 Lexical Features .....</b>	<b>- 54 -</b>
<b>4.5.2 Standardization of Legal Terms .....</b>	<b>- 57 -</b>
<b>4.5.3 Rarity of Legal Arabic-English Dictionaries .....</b>	<b>- 58 -</b>
<b>4.5.4 Syntactic Features .....</b>	<b>- 59 -</b>
<b>4.5.5 Textual Features.....</b>	<b>- 61 -</b>
<b>4.5.5.1 Layout Features .....</b>	<b>- 61 -</b>
<b>4.5.5.2 Sentence Length .....</b>	<b>- 62 -</b>
<b>4.6 Lexical Cohesion .....</b>	<b>- 62 -</b>
<b>4.6.1 Lexical Repetition.....</b>	<b>- 62 -</b>
<b>4.6.2 Morphological Repetition .....</b>	<b>- 62 -</b>
<b>4.7 Specific Aspects.....</b>	<b>- 62 -</b>
<b>4.8 Translator's Competence.....</b>	<b>- 63 -</b>
<b>Chapter Five .....</b>	<b>- 65 -</b>
<b>5. Comparison between Arabic and English Legal Texts .....</b>	<b>- 65 -</b>
<b>5.1 Introduction .....</b>	<b>- 65 -</b>
<b>5.2 Legal Register.....</b>	<b>- 65 -</b>

5.2.1	Field of Discourse .....	- 65 -
5.2.2	Mode of Discourse .....	- 70 -
5.2.3	Tenor of Discourse .....	- 70 -
5.3	Differences between English and Arabic Legal Texts .....	- 73 -
5.3.1	Lexical Differences .....	- 74 -
5.3.1.1	Archaic Words .....	- 76 -
5.3.1.2	Binomials and Multinomials .....	- 78 -
5.3.2	Syntactic Differences .....	- 82 -
5.3.2.1	Punctuation .....	- 82 -
5.3.2.2	The Nominal Group .....	- 88 -
5.3.2.3	The verbal Group .....	- 90 -
5.3.2.3	Present .....	- 90 -
5.3.2.3.2	Modality .....	- 91 -
5.3.2.3.3	The Passive .....	- 100 -
5.3.3.	Textual Features .....	- 102 -
5.3.3.1	Layout Differences .....	- 102 -
5.3.3.2	Cohesion .....	- 105 -
5.3.2.1	Lexical Cohesion .....	- 105 -
5.3.2.1.1	Pronoun Referencing .....	- 105 -
5.3.2.1.2	Lexical Repetition .....	- 109 -
5.4	Culture Differences .....	- 111 -
Chapter Six	.....	- 117 -
6.	Discourse Analysis .....	- 117 -
6.1	Introduction .....	- 117 -
6.2	Lexical Level .....	- 119 -
6.2.1	Binomial Collocations .....	- 157 -
6.3	Syntactic Features .....	- 159 -
6.3.1	Passive .....	- 159 -
6.3.2	Modality .....	- 160 -
6.3.2.1	Shall .....	- 161 -
6.3.3	Must .....	- 168 -
6.3.4	May .....	- 171 -
6.4	Textual Features .....	- 173 -
6.4.1	Lexical Cohesion .....	- 173 -
Chapter Seven	.....	- 182 -
7.	Survey Analysis .....	- 182 -

7.1	Introduction .....	- 182 -
7.2	Controlling and Distributing the Survey .....	- 183 -
7.3	Problems Faced During Completing Survey .....	- 183 -
7.4	Survey Design.....	- 184 -
7.4.1	Part One: Survey Completed by Legal Translators: .....	- 184 -
7.4.2	Part Two Survey Completed by Legal Drafters:.....	- 196 -
7.5	Analysis of Data Collection:.....	- 196 -
Chapter Eight .....		- 200 -
8.	Conclusions and Recommendations: .....	- 200 -
8.1	Research Summary and Findings .....	- 201 -
8.1.1	Collaboration between Legal Translators and Lawyers in Legal Translation: .....	- 205 -
8.2	Recommendations .....	- 207 -
8.3	Suggestions for Further Research: .....	- 207 -
Appendices.....		-209-
Bibliography .....		- 257 -

## TRANSLITERATION SCHEME

The Arabic transliteration system used in this thesis is that of the Library of Congress.

Arabic Sound	Transliteration Symbol	Arabic Sound	Transliteration Symbol
ء	`	ظ	Z
ب	b	ع	ʿ
ت	t	غ	gh
ث	th	ف	f
ج	J	ق	q
ح	ḥ	ك	k
خ	kh	ل	l
د	d	م	m
ذ	dh	ن	n
ر	r	و	w
ز	z	هـ	h
س	s	ي	y
ش	sh	ء	`
ص	ṣ	long vowel 'a'	ā



		short Vowel	<b>a</b>
ض	ḍ	long vowel 'i'	ī
		short Vowel	i
ط	ṭ	long vowel 'u'	ū
		short Vowel	u

## LIST OF ABBREVIATIONS

SL	SOURCE LANGUAGE
ST	SOURCE TEXT
TL	TARGET LANGUAGE
TR	TARGET READER
TT	TARGET TEXT
SC	SOURC CULTURE
TC	TARGET CULTURE

## **Chapter One**

### **1- Introduction**

All translation is intended to act as a vehicle of cross-lingual social intercourse. Its growth has been accelerated by the increase in international business and development in which it plays a significant role in the inter-lingual transference of concepts. With this increase in trade development there has been a corresponding increase in the demand for the translation of legal documents. This process was referred to by Newmark as “service translation” (1988: 3).

With the 1957 discovery of oil in the country, Libya went from being one of the world’s poorest countries to taking a key position in the global economy. It obtained more than US\$ 100 billion worth of net gold and foreign-exchange reserves and a yearly oil and gas revenue of between US\$ 50 and US\$ 60 billion ([www.indexmuni.com](http://www.indexmuni.com)). Since 2006 Libya has opened up to investment from abroad which has resulted in the signing of several deals with overseas investors with the value of around 40 billion US dollars. The country has also opened the assets of several state-owned companies to investors from overseas. The objective of all these measures is to generate employment for the resident population and to help the indigenous economy. As Arabic is the language of business in Libya all legal documents must be in this language. Occasionally contracting commercial parties have to use English to exchange letters, and usually the commercial contracts are drafted in Arabic and then translated into English. Sometimes there may be a discrepancy between the Arabic and English versions, and in this case the Arabic rendition will be the one which is considered binding. The aforementioned difficulties occur for various reasons including uncertainty, and structural differences between the two countries’

legal systems which can be considered to represent a major challenge for the translator because of their technical nature.

According to my own experience as a legal translator in Libya, translators in Libya face various difficulties in transferring the legal meaning from Arabic into English in the area of technical terms, syntax, local culture and the difference between the two legal systems.

This research aims to examine the challenges in translating Arabic legal texts into English with reference to Libyan commercial law.

It analyses the main features of legal discourse such as lexical, syntactic and textual features in order to identify the major problems that face translators in the field of legal translation.

### **1.1 Statement of the Problem**

As with other genres of translation, the interpretation of legal documents can pose challenges. Translation difficulty arises when the two countries' legal systems are different in terms of both history and culture - something which naturally affects terminology. This is due to the fact that a specific concept in Libyan legal system for instance, may have no counterpart in English legal system. According to Basil Hatim, “each section of the legal document has a ‘language’ of its own which is essentially of a formulaic nature. The translator must therefore be acquainted with these conventions in both Arabic and English” (1997: 14).

This is the case with the translation of Libyan legal documents such as acts of parliament and contracts translated from Arabic into English because of the differences in the two legal systems and the intricacy of the language of law itself. However, some translators have been accustomed to seeing such texts as ‘sensitive’ and unchangeable and can be literally translated word for word (Šarčević, 2000: 24).

Unlike earlier analyses, such as those of Šarčević (1997), Varó and Hughes (2002), Asensio (2003) and Cao (2007), who examined the translation problems of legal texts in other languages such as Spanish, this study will concentrate on the importance of conveying the legal meaning and on how legal theories and concepts can be transmitted from Arabic into the English language. The present study views a comparison between Arabic and English expressions and terms as valuable because it will assist in the understanding of both legal systems and indeed emphasise the need to try to understand both legal systems. Moreover, these two systems are good representatives of two Common Law and Civil Law schools.

## **1.2 Objectives of the Study**

The aims of this study are to explore the following questions:

- 1- How legal Arabic and English documents of law differ and agree in terms of lexical syntactic and textual characteristics [especially the translation of Libyan law into English].
- 2- What difficulties legal translators in Libya encounter when translating legal documents.
- 3- How collaboration between legal translators and lawyers can affect the quality of legal translation.
- 4- What significance can be attributed to the notion of equivalence, and its role in achieving a more effective and useful translation.
- 5- How the language of legal documents, in particular the terminology used, can be clarified using clearer and less complicated language.
- 6- What recommendations can be suggested for translators who work with Arabic-English legal documents, in particular Libyan legal texts?

### **1.3 Methodology**

In any study, the methodology establishes the theoretical and analytical outline in which the researcher performs the research and approaches its central problem. As previously discussed in section 1.2, the present study aims first to show that one of the main sources of mistranslation of Arabic legal texts into English is lexico-grammatical and textual features, and then to discover why these mistranslations occur. One relevant consideration is there is no useful Arabic-to-English legal dictionary. The existing dictionaries are unhelpful in that they offer definitions rather than accurate corresponding terms in English. Legal dictionaries such as *Faruqi's Law Dictionary* can be deceptive as they sometimes provide the same terms in English for two or more different terms in Arabic which could in fact have broadly different meanings.

#### **1.3.1 Theoretical Framework**

In theoretical terms, corpora are primarily employed to study the translation process by investigating how a concept is transmitted from one language to another. The study also carries out a comparison of the linguistic characteristics and their frequencies in the source and target texts. This section of the study will use the Varó and Hughes (2002) model which forms a basis for the analysis. Other translation theories such as those of Newmark (1981), Nida (1964), etc. will be considered throughout the study.

#### **1.3.2 Survey Study**

For this, 15 Libyan translators in the law and 15 commercial lawyers were given two surveys. The first of these had 11 questions relating to the difficulties in translating legal and commercial texts in particular; such difficulties can be lexical, syntactic, or textual. Translators were also asked whether they collaborate with lawyers in order to overcome such difficulties, which may vary according to whether they occur in Arabic-into-English translation or vice versa.

The second survey was addressed to 15 commercial lawyers and focused on the following issues: the quality of the English translation of legal documents in general, and commercial contracts in particular; the criteria for or basis of choosing one language version of a translated text as the established version rather than accepting both versions in each language as legally legitimate texts; and the importance of partnership between commercial lawyers and translators in legal translation work.<sup>1</sup>

### **1.3.3 Discourse Analysis**

Here Arabic legal texts and their English translations were contrastively studied and this analysis was applied to a range of types of legal texts, with a special focus on commercial contracts and agreements in particular.

The translations which were selected for analysis were produced by professional translators in Libya and appear in a book which is published annually by the Libyan government. The 2004, 2006 and 2010 editions of Libyan commercial law were selected for the this study as they include the government decisions regarding commercial and investment activities after Libya opened up to foreign investment, a process which led to the amendment of such decisions.

The study will examine 76 out 214 texts from Libyan commercial law and their English translations (see appendices). Lambert and Van Gorp (1985: 48) argue that comparing the source text and the target text is a pertinent part of translation.

The focus of the study will be the different levels of lexical characteristics including pure lexical terms, semi-technical terms, general words, modality, and lexical cohesion. It will also analyse the syntactic and textual level of the legal texts. The analysis will also involve heuristic processes and include translations suggested by the researcher.

---

<sup>1</sup> See chapter seven for more details.

Both qualitative and quantitative analysis will be used to examine the lexicogrammatical and textual characteristics which are found in the translation of Libyan legal documents. The study will record how often lexical properties such as the use of verbs and nouns and use of modality and collocations occur in both Arabic and English legal documents analysed (See Chapter Six). It can be seen from this area of the study how legal translators tactically allocate constrained values to legal texts (these may be features of lexis, syntax, or even discourse). It can also be seen that translators of legal texts often prefer the use of certain types of vocabulary. For example, antiquated traditional words and expressions such as “aforesaid”, “hereinafter”, and “witnesseth” abound through many legal documents in the English language. These terms are only used by lawyers and alert any reader to the nature of the document (Crystal & Davy 1969: 207). Aside from this, there are further technical terms which only occur in Libyan Arabic legal language such as: “اللجنة الشعبية” or collocations such as “المكتب الشعبي” and “أمين اللجنة الشعبية”.

A prominent characteristic of English legal language is paired words which have the same or almost the same meaning. These are known as “binomials”<sup>2</sup> and they “rely on inclusiveness as compensation for lack of precision” (Crystal & Davy, 1969: 208). This coupling also occurs in legal Arabic, for example in the phrase “تعد هذه الاتفاقية نافذة وملزمة للطرفين”, meaning “This agreement shall be binding on the parties”. Here the two terms “ملزمة” and “نافذة” mean, when translated literally into English, “effective and obligatory”.

By analysing the translations carried out by professional translation services, this study will attempt to find out whether the use of Arabic binomials, for instance, has the same objective as its English equivalent.

---

<sup>2</sup> See chapter five and six for more details.

## 1.4 Research Data

### 1.4.1 Materials

The following Libyan parliament decisions are selected for this study because they include most of the most recent amendments to Libyan commercial law:

Law No. 6 of 2004 for Regulating the Activities of Trade Agencies.
Decision No. 136 of 2004 for Issuing the Executive Regulation for Law No. 6 of 2004 for Regulating the Activities of Trade Agencies.
Decision No. 52 of 2004 Regarding the Commodity Groups Allowed for Import by the Authorized Bodies.
Decision No 12 of 2005 for the ban on import of certain commodities, unless the producing companies thereof have local authorized Trade Agents in Libya.
Decision No 190 of 2005 for the ban on import of certain commodities, unless they have local authorized Trade Agents in Libya.
Decision No 190 of 2005 for granting Guarantee for Durable Goods, A guide Form (Contract & Agreement) for performing Trade Agency.
Decision No 171 of 2006 issued on 13-07-2006 for issuing the executive regulation for Law No. 21 of 2001 on performing economic activities, as amended by Law No. (1) of 2004, Contract Employment Form, Law No. 23 of 2010 Regarding Commercial Activities.

From the commercial legal laws above, 76 out of 214 Arabic texts translated into English were analysed and examined carefully in an attempt to find out how each legal Arabic text is rendered in English in terms of lexical, syntactic and textual features, revealing the different techniques used by the translator to transfer each concept into the English language. The techniques vary considerably. Chapter Three is devoted to the study of these different methods and techniques. This structured analysis points out not only the different techniques but also the pitfalls of legal translation. The analysis of the texts will be divided into qualitative and statistical elements<sup>3</sup>.

---

<sup>3</sup> See chapter six for more details.



### **1.4.2 Procedure and Data Collection**

The data of the study are taken from Libyan Parliament decisions listed above (see section: 1.5.1) which are published annually in a book<sup>4</sup>.

The process hinges on the assumption that the target texts (TT) would meet the two requirements suggested as being essential for an “equivalent” translation in this context. These requirements are accuracy and reasonability. The comparison seeks to reveal the aspects in which such target texts might fail to perform the same function as their source texts (ST).

Two surveys were also distributed among 15 legal translators and 15 commercial lawyers. The legal translators were given a survey consisting of 10 questions concerning their qualifications, their work experience, and the difficulties they may encounter when translating legal text from Arabic into English and vice versa. The survey also involves questions regarding the importance of consulting lawyers in order to overcome any difficulties in understanding the law.

Commercial lawyers are also required to answer four questions regarding the quality of the translations produced by legal translators in Libya. Lawyers are given samples of such translations in order to evaluate the quality of English translations and suggest any ideas that would make the translation better.

Due to the situation in Libya, some difficulties faced the researcher during the distribution and collection of the surveys. There were also a limited number of translators and commercial lawyers after many of them left the country after the uprising which started in February, 2011. (see Chapter 7 for more details).

## **1.5 Value of the Study**

The legal approach attempts to explain translation from the point of view of what is already done by the original author in the text and what is done in the

---

<sup>4</sup>See appendices

translation as a response to the original. It is hoped that the study will help the translators of legal documents to overcome the difficulties of translating other Libyan government decisions. It also sheds some light on the legal language itself and its impact on the process of translating such texts.

## **1.6 Outline of the Study**

The study will also analyse the translation at the lexical, syntactic and textual levels. It will also discuss the fact that there is a lack of useful dictionaries of legal terms from Arabic into English. Most dictionaries are deficient, especially in the area of legal terms that are needed by professional translators. These dictionaries often do not seek to provide sufficient definitions nor precise equivalent terms in English. Moreover, they can be misleading as a result of providing the same terms in English for two or more different terms in Arabic which could have widely different meanings. Another difficulty legal translators may encounter is the lack of specialised translation courses at the university level. Moreover, the level of English attained by graduates may make it harder for the translators to be able to produce a good quality English text. Amongst the challenges legal translators may also face is the lack of legal background, which is indeed essential for those who would be the translators of law.

## **1.7 Layout of the thesis**

This thesis is divided into seven chapters. Each deals with a particular topic that contributes to the overall discussion and leads to the conclusion.

The present **ChapterOne** above gave a general introduction to translation in general and introduced the specific topic. It highlighted the background of this research and the objectives of this thesis.

**ChapterTwo** sheds light on the history of both the Libyan and English legal systems. The features of both Arabic and English legal discourse are also discussed in some detail.

**Chapter Three** will first provide the theoretical background of translation in general and then discuss legal theoretical models which draw on questions of language and culture, terminology, and equivalence.

**Chapter Four** reviews the literature of translation in general and of legal translation in particular. It will also discuss types of translation method used for legal translation and the particular translation model adopted for this research.

**Chapter Five** discusses the differences and similarities between Arabic and English legal texts. It will then investigate the terminological and textual features. Specifically, it will explain in detail the differences and similarities with examples between Arabic and English legal texts in terms of translating modality, technical terms, lexical cohesion, collocations, textual features such as punctuation and sentence length etc. It will introduce the translation technique and methods used by the translator to translate such texts, such as literal translation and free translation and also the problems that may be encountered during translation from Arabic into English. The chapter will conduct a contrastive analysis which shows the similarities and differences between Arabic and English legal texts.

**Chapter Six** forms the backbone of this thesis. A contrastive analysis of translated Libyan legal texts from Arabic into English will be conducted in terms of their lexico-grammatical and textual aspects. The chapter will analyse the translation of such documents and the translation techniques adopted by the translator. It will first analyse legal terms translated in terms of technicality, as discussed by Varó and Hughes (2002): the translation of purely technical, semi-technical and general terms used in legal texts. The chapter will discuss the match and mismatch between both ST and TT texts. Texts will also be analysed in terms of lexical cohesion, modality and collocations.

**Chapter Seven** reviews and analyses the results of the questionnaires completed by legal translators and lawyers. It suggests some recommendations for legal translators in order to improve the quality of legal translation as a professional activity in Libya.

The final **ChapterEight** will contain the conclusion and suggested recommendations.

## Chapter Two

### 2. Historical Background

The difficulties involved in producing legal translations may be explained, at least in part, in terms of the different environments in which legal issues have been debated and settled or continue to be debated. Legal language develops in societies as a reflection of their social environments.

It is essential for the reader to be familiar with the history of legal language in order to fully understand its nature. There is more than one explanation as to how legal language came to be what it is today (Tiersma, 1999:47).

Since much of the explanation can be found in the historical events which have left their mark on the language of law, we should first take a glance at the historical background of today's Libyan legal language and how it was influenced by certain events.

#### 2.1 Libyan Law

The legal system in Libya is rooted in both Islamic Law (شريعة-sharīʿa) and Arabic customary law (عرف-ʿurf/), and all legislation stems from these sources. Thus the words and phrases which occur in the language of the law in Libya also find their roots here. The Bedouin historically preferred to use tribal custom to address their law-related issues and were not inclined to use religious courts (محاكم شرعية-maḥākīm sharʿīyya). However, officials of the Ottoman Empire separated the judicial and executive authorities. While there was a secular court for criminal matters, this ran alongside the Sharia court which was limited to dealing with matters of personal status, succession and وقف<sup>5</sup>/waqf.

---

<sup>5</sup>An inalienable religious endowment in Islamic law, typically donating a building or plot of land or even cash for Muslim religious or charitable purposes. The donated assets are held by a charitable trust. (See Layish, 1998: 96)

The Ottomans ruled Libya for centuries, and then came the Italians in 1912. In 1912 the two powers (that is, the Ottomans and Italians) signed a treaty in which they agreed to maintain the religious courts (محاكم شرعية-*maḥākim sharʿīyya*) and the Sharʿa law in Libya. The agreement also stipulated that the Ottoman Sultan and his representative (نائب السلطان-*nāʾib al-sultān*) would retain the position of spiritual leader and caliph of the Muslim community. The role of the representative (نائب السلطان-*nāʾib al-sultān*) was to monitor the application of the Islamic law (الشريعة /*sharʿa*) in matters of worship, personal status, and وقف /*waqf*. The 1912 treaty was followed by a second one in 1915. This time the Italians and the Ottomans stripped the Sultan and his representative (نائب-*nāʾib*) of their privileges.

Although both religious and secular judicial systems in Libya were maintained under Italian rule, European legal customs also entered the country. In October 1926 religious courts (محاكم شرعية-*maḥākim sharʿīyya*) headed by a supreme court (هيئة قضائية-*haīʾa qaḍāʾīyya* - Judicial Board) were founded. On 24 March 1939 a Mufti was employed who ranked second only to the president and members of the supreme religious courts (محاكم شرعية-*maḥākim sharʿīyya*). The judges (القضاة-*quḍāt*) were also the judges of civil courts and members of وقف /*waqf* and district administrative boards. Despite these positions, the Italians exercised a degree of hegemony over the legal rulings issued by the Islamic judges in order to ensure that they did not contradict their public policies which were based on western European standards. An example of this can be seen in a ruling by the Italian Governor of Libya who in 1935 decided in a meeting with several judges (القضاة-*quḍāt*) and clerics (علماء-*ulamāʾ*) to forbid the consummation of marriages with girls under the age of fifteen, along with the practice of excessive dowries (مهر-*mahr*) and trousseaux (جهاز-*juhāz*).

Italian rule was followed by independence and the reign of King Idris. In what appears to be a remnant of the Ottoman era, Libya had both Islamic law

(الشريعة/sharī'a) and civil judicial systems (نظام القضاء المدني-nidhām al-qadhā' al-madanī) during this period and religious courts (محاكم شرعية-maḥākīm sharī'a) likewise retained sole jurisdiction in matters of personal status, succession, and وقف/waqf.

Libyan religious courts (محاكم شرعية-maḥākīm sharī'a) were abolished in 1973. Under Law No. 87, Islamic law (الشريعة-sharī'a) and civil courts were amalgamated into a single judicial system which included three courts: the Court of Appeal (محكمة الإستئناف-maḥkamat al-'isti'nāf), the Court of First Instance (المحكمة الابتدائية-al-maḥkama al-ibtidā'īa), and the Summary Court (المحكمة الجزئية-al-maḥkama al-juz'īa). This was later reorganised into a Supreme Court with the addition of special courts for isolated regions. Matters which were previously dealt with by the Islamic courts could now be addressed by the Court of First Instance, which was presided over by three judges. Islamic judges from the religious courts (محاكم شرعية-maḥākīm sharī'a) of appeal now presided over the new appeal courts where judgements concerning personal status, succession, or وقف/waqf became subject to appeal to one of the five chambers of the Supreme Court.

Laws were framed so as to be made agreeable with the Islamic law (الشريعة - sharī'a) by procedures based on custom and usage, the Maliki school being the predominant school. New stipulations on *khul'*<sup>6</sup> were introduced following the recommendations of the Personal Law Codification Committee regarding the Law on Women's Rights in Marriage and Divorce in 1972. In the 1970s changes influenced by the Egyptian system brought in punishments for theft, adultery (زنا-zina), false accusation (قذف-qadhif) and artificial insemination, making Libya the first country to introduce (عقوبة الحد-hadd) punishments through state legislation.

---

<sup>6</sup> This means the right of a woman to seek a divorce from her husband under Islamic Law in return for compensation (usually monetary) paid back to the husband from the wife.

As can be seen, Libyan law has always functioned in accordance with Islamic law. The next section gives a more detailed account of the relevant aspects of Islamic Law.

## **2.2 Islamic Law**

In Libya, as in most Arab countries, the legislation system is based on the Muslim faith and Islamic law (الشريعة-sharī'a) which, according to Coulson (1964: 1-2), has not changed or developed because it has been believed by many to be faultless since the dawn of Islam. As the Qur'an states: “وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ ” “لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ” “And we have sent down unto thee the message, that thou mayest explain clearly to men what is sent for them” (Surat An-Nahl). Islamic judges and legal experts have been charged with the role of instructing the courts on what decision to take after careful study of Islamic law (الشريعة-sharī'a). The Qur'an, the Sunnah (the actions of the Prophet), إجماع/ijmā' (consensus of scholarly opinion) and قياس/qiyās (deduction by analogy) form the four sources of sharī'alaw (الشريعة).

## **2.3 Islamic Schools of Law**

Hanafi, Shafi'i, Maliki and Hanbali are the four main schools of law within the Sharī'a. History has witnessed no small amount of rivalry and quarrels between the adherents of the aforementioned four disciplines of law. Although the basic principles of Islamic belief are agreed upon, there are practical and theoretical differences between these schools. For example, the definition of what a company is in Islamic corporate law differs among the four disciplines, as also do rulings on how partners can dispose of the company's resources. Regarding the use of interpreters in court, all the schools agree that the interpreters should have a good understanding of the law and be religiously upright, and that it is:

“...desirable that a judge should use an interpreter to interpret the allegations, statements and matters put in defense, especially if the claimant is non-Arab and



cannot speak in Arabic or if the witnesses are fluent only in their foreign tongue, [and] then the need arises for an interpreter” (Abou Fares, 1978: 58).

Despite this, Hanafis state that one interpreter is sufficient while the adherents of the Shafi’ school argue that two are necessary. Arguments occur regarding the use of female and non-Muslim interpreters, etc (ibid: 59).

### **3. The Qur’an as a Source of Law**

As mentioned above, the Qur’an and Sunnah are the basic sources of Islamic law. All Muslim writers and scholars agree that the Qur’an is the Holy Book sent by God through his messenger. It has an important legal as well as religious significance. According to one modern scholar, there are 350 legal verses in the Qur’an, of which 140 relate to belief, and to other devotional matters such as prayers and fasting (Janin and Kahlmeyer, 2007: 18).

The Qur’an has 70 verses dealing with family issues such as marriage, divorce, inheritance etc. Family matters such as divorce (طلاق/ṭalāq) are clarified in some verses in the Qur’an such as “يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ....” / O Prophet! When you divorce women, divorce them for their prescribed time” (Talaq). Moreover, some verses of the Qur’an regulate commercial activities such as sales, contracts, loans etc. For instance, the Qur’an prohibits the charging of interest in trade activities “وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا” - Taking interest on loans is prohibited for you, but doing business is permitted” (Surat Al-Baqara). The Qur’an also lays down provisions for contracts between parties and other business activities (ibid). The importance of witnesses in signing a contract can be noticed in this verse: “يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكُنْ بَيْنَكُمْ” - When ye contract a debt for a fixed term, record it in writing. Let a scribe record it in writing between you in terms of equity” (Al-Baqara).

Regarding committing crimes such as adultery (زنا-zina), theft (سارقة-sariqa), robbery (حاربة-ḥarāba), and defamation (قذف-qadhḥf), the Qur’an stipulates

punishments in a few verses: “الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ”-The adulteress and the adulterer; punish each one of them with a hundred lashes” (Surat An-Nour). Other family issues such as marriage, wills, waqf and divorce are also mentioned in a few verses: “فَإِنْ كُنْتُمْ بِأَذْنِ أَهْلِيهِمْ وَأَتَوْهُنَّ أَجُورَهُنَّ” -You shall obtain permission from their guardians before you marry them, and pay them their due dowry equitably” (Surat An-Nisa).

### **3.1 Commercial Law in Islamic Law**

There is no precise definition for contract in Islamic law, but most scholars define it as “offer and acceptance” (Baamir: 68). Baamir adds that these constitute one of the main conditions that must be applied to form a contract in Islamic law; the contract should follow the Islamic rules in terms of legality and certainty, and it must satisfy such essential conditions (ibid: 68). Libyan commercial law goes back to the Ottoman Code of 1858 defining specific categories of land, then to be followed by the Italian Land Registry which was first set up in 1923. A sample of old legal documents can be found in Aharon Layish’s book *SHARĪ‘A AND CUSTOM IN LIBYAN TRIBAL SOCIETY* published in 2005, presented in an edition of 72 Libyan court decisions containing a selection of judgements addressing matters from the Ottoman era such as property, obligations and contracts. The following example of such judgements took place in the Shari’a court of the town of Ajdabiya, in the south-east of Libya:

[١]بمحكمة الكفرة الشرعية بين يدي القاضي بها الشيخ محمد صالح البكري وفقه الله تعالى  
[٢]حضرا جابر بن مغرب {١}لقريد وحمد بم محمد فنوش المعروفان لدى القاضي ذاتا ونسبا واقرا  
[٣]حال حضورهما بالمحكمة الشرعية طايغان مختاران بقصد الاشهاد على انفسهما و[٤]هما بحالة جائزة  
من الرشد والصحة والاختيار قائلان في تقريرهما انهما قد باعا الى [٥]محمد بن عبد القادر ابو طواقي  
المسماري بيت المرحوم يونس بن عبد الرحمن حميد الذي ببلد [٦]الكفرة بموجب وكالة ارسلوها لهما  
ورثاءه من جالو الذي بموقع الزاوية المحتوي على دارين [٧]وخلالي وساحة ومرحاض وداخل البيع ايضا  
الساحة الذي شرقي البيت عرضها على حد [٨]بنيان ورثت [ورثة] علي شيلو وطولها على طول البيت  
المبيوع ما عدى البير وحرمة له شارع [٩]فاصل بينهم ليشربو منه كلهم وبابه يفتح من الجبهة الشرقية  
وحدوده من الجبهة [١٠]الشرقية حصت [حصاة] حواء بنت حميدة قرجية زوجة يونس المذكور والشارع  
المار الفاصل [١١]بينه وبين دار المجزرة ومن الجبهة الجنوبية بيت ورثت [ورثة] علي قرجية ومن الجبهة  
الغربية [١٢]بيت عبد الله الطبولي ومن الجبهة الشمالية صحراء والزمنا انفسهما البائعان كافة الدرك

(Layish, 1998: 79)

“[1] In the Shari 'a Court of Kufra, presided over by ShaykhMu'ammad Iali' al-Bakri. May Allah the Exalted grant him success![2] Jabir b. Maghrib al-Gred and Oamd b. M'ammad Fannush,identified (ma'rufan) in person and by descent (nasab) before the Qaḍi,appeared and testified [3] in the Shari'a Court, willingly (ṭa'i'an) andvoluntarily (mukhtaran), with the intent of testifying (bi-qaḍd al-ishhad)about themselves [4] while both were in a state of legal competence (‘ala ja'iza), in terms of normal prudent judgment to dispose of property (rushd ), physical health, and freedom of choice (ikhtiyar). They claimed in their statement that they had sold (ba'a) [5] M'ammad b. 'Abd al-Qadir Abu ṭwagi al-Musmari the house of the late Yunus b. 'Abd al-Ra'man Omed located in the town of [6] Kufra, by virtue of a power of attorney (wakala)4 sent to them by the heirs (wuratha") of the deceased residing in Jalu. [The house sold] was located on a site in al-Zawiya and comprised two lodgings (dar), [7] and the space [around the walls of the house] (khilali), a courtyard, ....”.

(Layish, 2005: 241)

The document above is an example of a Libyan religious court's (محاكم شرعية-maḥākīm shar'īyya) decision in the case of two men who sold a property to a third party by virtue of power of attorney. The judge(قضاة-quḍāt) endorsed by declaratory judgement the validity of the sale. This old document shows how the religious courts (محاكم شرعية-maḥākīm shar'īyya) have served as the basis of

Libyan society since the time of the Ottomans and Italians. Therefore, the contemporary legal system relies on Islamic law (شريعة-sharīʿa) as a basic source of law.

### **3.2 English Law**

The word “law” originated in Scandinavia around AD 1000, coming from prehistoric Old Norse. This in turn derived from the Old Icelandic word meaning “something laid or fixed” (Melinkoff, 1963: 34).

The spread of Christianity, and Catholicism specifically, had a great influence on English legal language as it advanced Latin as a written language. Latin was particularly influential on canons which controlled marriage and family matters. Surviving Latin terms include “client”, “admit” and “mediate” (Tiersma, 1999:16).

Following the Norman invasion of 1066, Anglo-Saxon was replaced by Latin in legal texts (ibid: 20). French then remained the principal form of legal discourse until 1474 when King Henry V, who was at war with France, decided to have his documents written in English (ibid: 23).

The rise of the French language did not entirely diminish the importance of Latin, especially written Latin. Because so many documents were written in Latin, Latin terms are still used in legal English nowadays for example: “affidavit, contra, contra legem, Contradictio in adjecto, dictum” are all latin used in legal English. The use of Latin gives the writings an air of classical dignity and their poetic nature makes them easier to remember (ibid: 26). This rhythm and rhyme is still found in current legal expressions, for example the terms “Rex’ or ‘Regina” used to refer to the reigning monarch (ibid: 27).

When Anglo-French died out as a common, ordinary spoken language, the French spoken by lawyers and judges became a language used only by legal professionals (ibid: 28). Ordinary people, including their clients, could not

understand it. There were many French legal terms that could not be translated into English. French terms which remain commonly used in English legal language include “assizes” from the old French “assise”, “attorney” from the old French “atorné”, “chattel” from the old French “chattel” etc. Like Anglo-Saxon legal language, legal French pairs up words with similar meanings and, frequently, shared letters, such as “to have and to hold”. These juxtapositions often paired a native English word with a French word of the same meaning for example “reconnaître et avouer” (acknowledge and confess), “eu et reçu”(had and received), “testament” (will and testament), “juste et appropriée”(fit and proper).

As we have concluded, three languages were employed by the legal profession during the Medieval period, but the use of Latin and legal French gradually declined from the 17<sup>th</sup> Century.

In 1731, the government put an end to the use of Latin and French in the legal profession. However, some terms in these languages could not be easily translated into English so it was decided that the traditional names of writs and technical terms should remain in their original tongue (Tiersma, 1999:36).

As a result of the historical events and changes which we have discussed above, English legal language is archaic, longwinded and difficult to comprehend. It presents great challenges to Arabic translators.

### **3.3 Plain English**

Plain English means to make legal language easier to understand for non-specialists; and thus a legal sentence may start with a subject that should be kept close to the verb, and it should use the SVO construction to avoid ambiguity (Squire, 1982:63-76). Sentences should contain no more than 25 words, and all sentences should be confirmatory and use recognizable rather than antiquated and difficult words. (ibid: 101). In the words of Eagleson, the advantage of plain

legal English is that it “is an even higher gain than respect for the law and lawyers in writing plainly. Because its overarching goal is the understanding of the audience, it is the one style that enables us to serve others. And service to others is the quintessence of living. It enables lawyers to reach out from the confines of the law to use their legal qualifications for the advantage of their clients and the well-being of the community. It constrains them to put their skills at the disposal of the community for the benefit of the community, rather than the elevation of themselves. It does not turn the clients into lawyers: they need training for that. But it does foster a greater sense of comfort in and serenity with the law. The principles of plain language suffuse the law and lawyers with a human and a humane sensitivity (1988: 119).

Tiersma argues that those who are not legal experts find documents of the law difficult to comprehend because of the formal and outdated words and syntactic constructions (1999: 204). Tiersma discusses the reasons why legal language is complicated and challenging and ponders whether it could be made easier to understand and therefore more effective as a method of communication. In his view, one of the contributing factors to its complexity is “unusual vocabulary”. He argues that although some legal terms may be widely understood, there are others that are vague such as the expressions “beyond a reasonable doubt, negligence or wrongful imprisonment” (1999: 203).

Professor Fred Rodwell established in 1936 the Campaign for Clear English, which aims to render complicated legal language comprehensible to everyone. In the view of Professor Rodwell, there are “two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground” (1936: 38). Three years later, in his book *Woe Unto You*, Rodwell called for every law to be “written so that its meaning is plain for all to read” (Rodwell, 1957: 171). The movement gathered momentum and spread overseas, leading to the first Clear English legal documents in America in 1975.

The above discussion shows that both Arabic and English are totally different and originate from different backgrounds. Libyan legal terms contain words from a range of legal settings, reflecting the fact that the legal system in Libya is a mixture of Islamic Shari'a and laws from various European countries. English law, however, originates from both the French and Anglo-Saxon legal background.

Now that we have discussed the history of both Arabic and English legal language and how each legal language and system developed, the next chapter will discuss the theoretical framework on which this research analysis will be based.

## **Chapter Three**

### **3. Theoretical Background**

#### **3.1 Introduction**

Chapter Two shed light on the history of both the Libyan and English legal systems. It reviewed the history of the legal system in Libya since the Ottoman Empire, and it explained how the Qur'an and Sunna function as one of the sources of the Libyan legal system. The previous chapter also described the originality of the English legal system since the Norman invasion in 1066 and the French language becoming the language of the statutes in 1310. The chapter achieved its purpose by making reference to legal history in both languages.

The aim of this chapter is to introduce the literature pertaining to translation theories and consider whether these can be applied to legal translation. It presents different views of some of the most relevant translation theories. It will first focus on the meaning of translation as defined by many scholars working from different viewpoints. It will then discuss equivalence theories, functional theories and cultural theories before it moves to a discussion of translation models and types of translation.

Translation is a complex process of transferring the meaning of a source language text into its meaning in the target language. Accurate transfer of meaning from one language to another only becomes possible if a translator has a full comprehension both of the source text and of how to produce the target text, a skill which entails knowledge of the lexicon, syntax, pragmatics, text structure and culture of the two languages involved.

Hatim and Mason (1990: 50) define translation as a “Communicative process which takes place within a social context” and argue that we must, therefore, study the whole perspective of this process. As well as examining the texts,



purpose and semiotics of the source language, we must also go on to establish the purpose and significance of the target texts and the requirements they are supposed to fulfil.

Venuti's view regarding the target text is that it is "... judged acceptable by most publishers, reviewers and readers when it reads fluently, when the absence of any linguistic or stylistic peculiarities makes it seem transparent, giving the appearance that it reflects the foreign writer's personality or intention or the essential meaning of the foreign text – the appearance, in other words, that the translation is not in fact a translation, but the 'original'" (1995: 1).

Additionally, Robinson states that translation is often thought to be primarily about words and their meanings: what the words in the source text mean, and what words in the target language will best capture or convey that meaning (1997: 128).

This statement makes it clear that translation involves the re-creation of meaning from one language to another. According to Bassnett, "in translation, there is substitution of TL meanings for SL meanings: not transference of TL meanings into SL. In transference there is an implantation of SL meanings into the TL text. These two processes must be clearly differentiated in any theory of translation" (2014: 18). The important word, "meaning", was defined by Firth as "a complex of relations of various kinds between the component terms of a context of situation" (1964: 110). This shows that "meaning" is expressed not only by combinations of words but rather when those words are used in a context within a culture. Robinson concurred with this view when he pointed out that words are actually important for the translator only "in the context of someone actually using them" (1997: 128-130).

Therefore, translation is not merely a linguistic activity through which meanings included in one "set of language signs" are transferred into those of another

language by the adequate use of dictionaries to transfer words. The reproduction of meaning involves “extra-linguistic criteria as well” (Bassnett, 2002:21).

In contrast to the traditional approach in linguistic work where language was regarded as a phenomenon separate from culture, language is now seen as an integral part of culture. Some scholars such as Bassnett (2002), Nida (2001), Snell-Hornby (1988), even regarded language as a reflection of “social reality”; the means with which humans express their cultures.

The definitions of translation mentioned above imply that the main objective of the translator is to transfer the same meaning intended by the author in the source language text into the target language text as accurately as possible. This concept of equivalence is first discussed by Jakobson (1959) and Nida (1964). It was to become the central issue in translation studies, but has been a controversial subject among theorists in translation studies over the past 50 years.

### **3.2 Equivalence Theory**

Equivalence can be divided into three kinds: i) intralingual, which occurs within the same language, for example in the form of rewording or paraphrase; ii) interlingual, which occurs between two languages (ST and TT); and iii) intersemiotic, which occurs within sign systems, as for example in the interpretation of road or street signs (Jakobson, 1959/2000: 114). Among the three types of equivalence, the interlingual type seems to be the most common one in the translation process between two languages. Steiner builds on Jakobson, who also discusses the challenge of synonymy in intralingual translation as similar to the challenge of equivalence in interlingual translation. According to his theory, “translation involves two equivalent messages in two different codes” (ibid: 233). Jakobson goes on to say that from a grammatical point of view languages may differ from one another to a greater or lesser

degree, but this does not mean that a translation cannot be possible; in other words, that the translator may face the problem of not finding a translation equivalent. He acknowledges that “whenever there is deficiency, terminology may be qualified and amplified by loanwords or loan-translations, neologisms or semantic shifts, and finally, by circumlocutions”. Jakobson provides a number of examples by comparing English and Russian language structures, and explains that in such cases where there is no literal equivalent for a particular ST word or sentence, then it is up to the translator to choose the most suitable way to render it in the TT.

Much of the writings of Nida and Taber, Vinay and Darbenet, House and Baker are specifically dedicated to equivalence. Baker (1992) reviewed some different forms of equivalence in her effort to examine the notion and practice of translation. She distinguished between grammatical, textual and pragmatic equivalents. Nida distinguishes between two types of equivalence: formal equivalence and dynamic or functional equivalence. Formal equivalence means to keep the target language items as close as possible to the source language word or phrase:

“... a formal equivalence (or F-E) translation is basically source-oriented; that is, it is designed to reveal as much as possible about the form and content of the original message” (Nida, 1964: 165).

Dynamic equivalence, however, is defined as a translation principle according to which a translator seeks to translate the meaning of the original in such a way that the target language wording will trigger the same impact on the target culture audience as the original wording did upon the ST audience. It is therefore to be defined in terms of the degree to which the receptors of the message in the receptor language respond to it in substantially the same manner as the receptors of the source language (ibid: 159).

Nida and Taber see that there are not always formal equivalents between language pairs. They suggest that formal equivalents should be used when the translation aims at achieving formal rather than dynamic equivalence. The use of formal equivalents might at times have serious implications in the TT since the translation will not be easily understood by the target audience. Nida and Taber, themselves assert that “Typically, formal correspondence distorts the grammatical and stylistic patterns of the receptor language, and hence distorts the message, so as to cause the receptor to misunderstand or to labor unduly hard” (2003: 201).

Nida and Taber argue that, in achieving dynamic equivalence, “frequently, the form of the original text is changed; but as long as the change follows the rules of back transformation in the source language, of contextual consistency in the transfer, and of transformation in the receptor language, the message is preserved and the translation is faithful” (2003: 200).

It might be said that the concepts of “equivalence” and “equivalent effect”, as used by Nida (1964) and other translation theorists, were propagated originally to deal with “relativity” in translation and to emphasize the idea of reproducing the effect of the original. Achieving it came to be widely held as the main aim of the translator, as Newmark points out. He assumes that “... the emphasis of this principle is rightly on communication...” (1981: 10); hence “... the translator should produce a different type of translation of the same text for a different type of audience” (ibid: 12). There are two strands to this common idea of “equivalent effect”. The first of these assumes that the reader of the target language is an unspecified average reader with a standard amount of knowledge and that the focus should be on “...how to convey the original as it is in terms of its effect on general audience” (Shen, 1985: 134). The second strand, however, assumes that the reader is a particular type of person and that “the SL receptor seems to remain an implied general one for whom only the

original work is available. The TL receptor, however, has turned into a specific type-bound one, which involves a notable change in the translator's job" (ibid: 135). This second strand argues against favouring one translation over another as "the best" for the general TL readership.

On the other hand, Catford discusses one of the most important theories on equivalence. He considers different shifts within languages and contends that there are various shifts when translation is carried out by translators. He focuses on the different linguistic elements as crucial variables in equivalence definition and equivalence finding. Accordingly, he divided the shifts across languages into level and category shifts. Level shifts include studies like morphology, graphology..... etc., while category shifts consist of structural, class, unit and intra-system shifts (1965: 20).

In addition to this, Vinay and Darbelnet regard translation as equivalence-oriented. They say that equivalence is the ideal method in many practical problems of translation. They suggest different translation approaches in order to achieve equivalence. Such strategies can be summarised as: i) word for word, ii) calque, and iii) borrowing. One must, when evaluating a translation, take into account the audience the translation is aimed at before we judge its effectiveness (1995: 255).<sup>7</sup>

As mentioned earlier, Mona Baker also explores the notion of equivalence at different levels. She distinguishes between word-level and above word-level, grammatical equivalence, textual equivalence, and pragmatic equivalence. She acknowledges that equivalence at word level is the first element to be taken into consideration by the translator. When the translator starts analysing the sourcetext (ST), he or she looks at the words as single units in order to find a direct "equivalent" term in the TL (1992: 11-12). She also notes that different grammatical structures in the SL and TL may cause remarkable changes in the

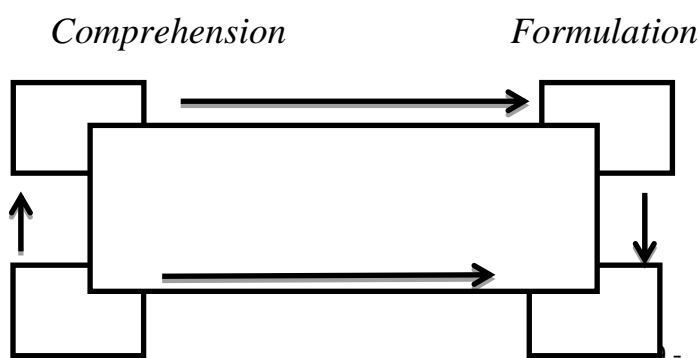
---

<sup>7</sup>See also Nida and Taber, (1974: 1), Tommola, (1995: 68), Edwards, (1995: 59) and Eco, (1995: 38).

way the information or message is carried across. These changes may induce the translator either to add or to omit information in the TL text because of the lack of particular grammatical devices in the TL itself. Texture is a very distinctive aspect in translation as it provides important directions for the understanding and analysis of the Source Text (ST) which may assist the translator in order to provide a cohesive and coherent Target Text (TT) in a specific context. It also helps him/her to work out the implicit meanings in his/her translation in order to convey the ST message. The translator's role is to re-produce the writer's ideas in the Target Culture (TC), in order to suite the Target Reader (TR).

Furthermore, Newmark (1981: 47) introduces the terms “semantic” translation and “communicative” translation which, according to Hatim and Mason (1990: 7), fall into the ‘middle ground’ of the translation process which is left between Nida's two methods. According to Newmark, semantic translation “attempts to render as closely as the semantic and syntactic structures of the second language allow the exact contextual meaning in the original” (source language). However, communicative translation “attempts to produce on its readers an effect as close as possible to that obtained by readers on the original” (source language) (1981: 39).

It seems to be that Newmark suggests a technique a translator has to acquire in conveying the meaning from one language to another. The translation process may involve re-formulation of the original text. He illustrates such a technique as follows:



Dickins, Hervey and Higgins, give Arabic-English examples of communicative translation suggested by Newmark such as: “ممنوع التدخين” (mamnū° at-tadkhīn) being translated as “No Smoking” rather than “التدخين ممنوع” (Smoking is forbidden - at-tadkhīn mamnū). These examples of communicative translation are also examples of free translation (2002: 17).<sup>8</sup>

### **3.3 Functional Language Theory**

The application of function as discussed by Halliday and Hassan (1973, 1978) is “about the meanings and not the words or constructions”. Generally, it is how language serves various functions and how the social context determines the language. The term “function” in their model refers to the function of language as a whole rather than to elements of linguistic structure (1973: 110). Functional theory studies the functions of a text by what Halliday calls “grammatical features”, which comprise morphology and syntax as well as the lexical features. Some aspects of grammar, for example, may be emphasized in one language use but not in another, and vice versa (1994: 102). According to Nord, translation “is the production of a functional target text maintaining a relationship with a given source text that is specified according to the intended or demanded function of the target text” (2005: 32).

In addition, Reiss views functional theory as the link between the function of text and translation methods. She proposes a specific method for each text type. For an informative (e.g. legal) text, for example, Reiss suggests that the concept of the ST should be fully and clearly conveyed without redundancy (1977, 113-114). For an expressive text, Reiss suggests the “identifying” method in which the translator should convey the author’s message (ibid: 20). Šarčević points out

---

<sup>8</sup>See also Roberts, (1985: 142) and Shuttleworth and Cowie, (1999: 21).

that “in legal translation, functional equivalence is advised in case of the absence of an exact equivalence” (2000: 236). Therefore, the translator should transfer the grammar and culture of the ST.

Furthermore, Hans Vermeer introduced a new term in 1978 called “Skopos” theory, which means in Greek “aim or purpose”, in which he argues that the shape of the TT should be determined by the function or “Skopos” that it is intended to fulfil in the target context, and it may vary according to the recipient. The corollary is that the translator should use the translation strategies which are most appropriate to achieve the purpose for which the TT is intended, irrespective of whether they are deemed to be the “standard” way to proceed in a particular translation context; in short, when producing a TT, “the end justifies the means”. It is worth noting that an awareness of the requirements of the Skopos “expands the possibilities of translation, increases the range of possible translation strategies, and releases the translator from the corset of an enforced – and often meaningless – literalness” (1989:42). It is the target reader who will prompt the translator to translate, to paraphrase or even re-edit the TT as the most appropriate strategy to be adopted in a given situation. The theory is an approach to translation for different types of documents, including legal text and especially contracts (ibid).

The Skopos theory is criticized by Newmark who sees “the oversimplification that is inherent in functionalism, the emphasis on the message at the expense of richness of meaning and to the detriment of the authority of the source language text” (1991b: 106).

Another criticism of this theory made by Chesterman who points out that “even though a translation may indeed fulfil its intended skopos perfectly well, it may nevertheless be assessed as inadequate on other counts, particularly as far as lexical, syntactic, or stylistic decisions on the microlevel are concerned” (ibid).

Vermeer argues that Skopos theory is applicable to any translation, including legal text (Šarčević, 1997: 18). However, Jeremy Munday does not seem to



agree with Vermeer since from Munday's point of view Skopos theory ignores the microlinguistic features (2008: 81).

### **3.4 Culture and Translation Theories**

In fact, when the concept is conveyed from one language (SL) to another (TL), it is actually two different cultures the translator is dealing with at the same time. This aspect seems to have been discussed by other theorists who regard translation process as not only the transfer of meaning between two languages but also between two different cultures and thus adopt a pragmatic/semantic or approach to translation.

It is inevitable also that when source and receptor languages represent very different cultures, there should be many basic themes which cannot be "naturalised" by the process of translating (Nida, 1964: 168). Due to that "Language also constitutes the most distinctive features of a culture, which may be described in a simplistic manner as the totality of the beliefs and practices of a society. And although a language may be regarded as a relatively small part of a culture, it is indispensable for both the functioning and the perpetuation of the culture" (Nida, 2001:13).

The process of transmitting cultural elements through translation is a complicated and vital task since culture is a complex collection of daily life experiences which includes religion, social life, customs, history etc. This is difficult to be fully transferred and understood. Especially in relation to a target culture, one important question is whether the SC will have a counterpart in the TC and would be familiar to the TC readership.

Here culture, is seen as "all socially conditioned aspects of human life" (Snell-Hornby, 1988: 39). This concept correlates with Newmark's definition of culture as "the way of life and its manifestations that are peculiar to a community that uses a particular language as its means of expression"

(1988:94). He also argues that language is not just ‘a component or feature’ but that “cultural deposits” are also contained in language (ibid: 95).

In general, the translator must be familiar with the cultural differences of both languages from and into which they translate and how the SL cultural features can be transferred into the TL culture. However, Dickins et al (2002:29) suggest “exoticism” to solve some problems in translating some cultural-specific terms. Their definition of “exoticism” denotes the TL features imported from the SL either at the lexical, syntactical, or cultural level. Exoticism is usually resorted to in cases where the TL lacks a given feature. Translators follow the strategy of exoticism to compensate for what they may lose in translating and to fill the gaps between the SL and the TL. Every language has specific words, which differ from one language to another. These certain words are particular to one language community and difficult to find equivalents in the target language (Baker, 1992:23).

This brief exploration of the interrelation between language and culture leads to the argument that a translator needs to be professional in the languages he is dealing with and at the same time understanding of their cultures; otherwise, his translation is likely to be inappropriate or even unintelligible. This interaction between language and culture and its impact on translation was emphasized by Bassnett when she declared that language is “the heart within the body of culture” and concluded that treating a text separately from culture is done at the translator’s peril (2002: 22).

### **3.5 Types of Translation**

Translation theorists have proposed various names for different types of translation. These include literal translation, formal translation, faithful translation, semantic translation, abstract translation, close translation,

literalism, and more. The main types pertinent to legal translation will now be looked at.

### **Absolute Translation**

This is a direct transfer from language to language without changing the original substance or structure of the text. Translation of this kind is obviously not always appropriate as the information and terminology must not be altered in a quality translation (Shuttleworth, 2006: 1).

### **Abstract Translation**

According to Gouadec this is an approach used in professional translation, along with seven possible other methods. Here the ST data is compacted to enable the information to be quickly retrieved. This can be done by translating the document's general subject and/or describing its objectives or by providing a condensed translation of the most pertinent points (1990: 337).

### **Literal Translation**

According to Shen (1989: 219) literal translation is a suitable approach for translating legal documents; however, scholars such as Steiner dismiss this method. In Steiner's words, "far from being the most obvious, rudimentary mode of translation, literalism is in fact the least attainable" (2013: 308). While Barnstone likens it to a photocopier of languages which processes meaning and produces results which are mechanical, banal, and repeatable (1993: 31).<sup>9</sup>

One may argue, to what extent the translator is free to create a new work which may bear no relation to the source work or whether he has to be entirely faithful to the source text. It is also argued by some scholars that the "form and content" of the original text must be delivered, whereas in other quarters it is argued that the "message" or the "spirit" of the original text takes precedence. It is invariably debated as to whether the intention of the translation or the message

---

<sup>9</sup> For further details, Shen, 1995: 219, Toury, (1995: 91), Venuti, (1995: 87), and Zlatera, (1996: 75).

of the text is of greater importance. It is possible to view the entirety of these arguments as diverging continuations of the traditional “literal-vs.-free” controversy about which Hatim and Mason point out: “... the problem is that the issue [of the controversy] is all too often discussed without reference to the context in which translating takes place; the social circumstances of translation are lost from sight”(1990: 6). We believe that we may be able to resolve this issue by taking a sociolinguistic approach and asking “... who is translating what, for whom, when, where, why, and in what circumstances?” (ibid).<sup>10</sup>

### 3.6 Translation Strategies

The translator has to adopt a translation technique based on translation theories and approaches. Scholars and theorists suggest different types of translation methods and techniques. Hervey and Higgins (1992: 29) claim, however, that to think in terms of a translation being either “literal” or “free” is untenable, since all translations fall somewhere on the cline below:

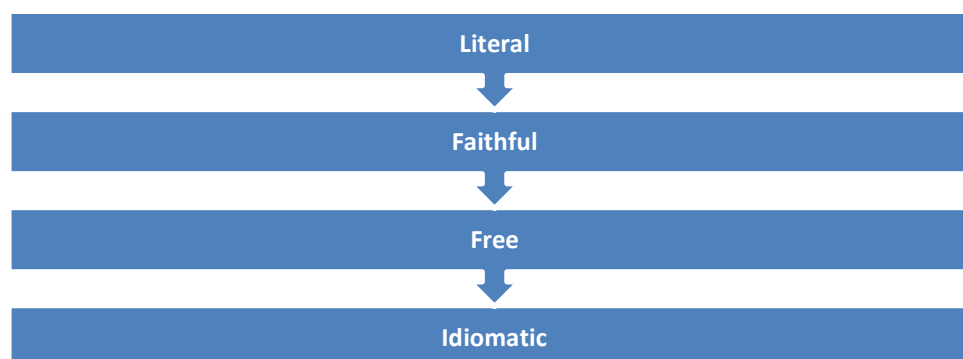


Figure 1

### 3.7 Genre, Discourse and Text

It is obvious that texts are not all of the same type. We can distinguish, for example, between literary text and scientific text. Legal text also has its own

---

<sup>10</sup>See Winter (1971), Kelkar (1985), Shen (1985), Maley (1987), Newmark (1988a), Hatim and Mason (1990), Trosborg (1994) and Obenaus (1995), among others.

distinctive features, terms and style. This section will therefore shed light on the concepts of “genre”, “discourse” and “register”.

For instance, Farghal and Shunnaq state that the term “genre” signifies “text type” or “register”. Although they assess the use of the term in recent works, they do not use it in their own works because of “...the problematic nature of the term “genre” and the multiplicity of its uses”. Although the expressions “discourse” and “text” are often used and understood to have the same meaning, some experts in the field disagree (1992: 210). For example, Widdowson opines that when looking at a text “...we may treat it as an exemplification of the language system and point out the incidence of certain linguistic structures and items of vocabulary ... as an instance of linguistic usage (1979: 23). To do this is to conduct register analysis and characterize the sample as text. But if we want to account for it as an instance of use in that it communicates something and does so in a certain manner, for example it might be a “description”, a “report” or a set of “instructions”, we should treat that sample differently, because ... these terms do not refer to the linguistic properties of the sample as text, but to the communicative function of the sample as discourse” (ibid: 24).

In the opinion of Brown and Yule, there are language experts who have a “text –as - product” view and analyse the “words–on–the–page”. To a certain extent, these linguists make the product itself central to the communication procedure (1983: 23). They see Halliday and Hassan’s (1976) work as it studies the consistent ties between sentences. “The analysis does not involve any consideration of how the product is produced or how it is perceived” (ibid: 24). Moreover, their view, “discourse is process”, and they state that “...we shall consider words, phrases and sentences which appear in the textual record of a discourse to be evidence of an attempt by a producer (speaker/writer) to communicate his message to a recipient (hearer / reader)” (ibid: 25).

Whereas, Kress believes that, “discussions with a more sociological basis or aim tend to use the term “discourse”..., while those with a more linguistic basis or aim tend to use the term “text” ...where the materiality, form and structure of language are at issue, the emphasis tends to be textual; where the content, function, and social significance of language are at issue, the study tends to be of discourse” (1985: 27). He adds that there is a certain area of reference for each expression and that “discourse is a category that belongs to and derives from the social domain, and text is a category that belongs to and derives from the linguistic domain. The relation between the two is one of realization: Discourse finds its expression in text”. He adds that “... certain of the range of linguistic features that make up the text are determined by the characteristics of the discourse ... the systematicness of features of the discourse also guarantees the systematicness of the selection of all the linguistic features of the text”<sup>11</sup>(ibid: 28).

Additionally, Kress argues that the form of the text is also established by the class of “genre” as the prescribed characteristics of a certain genre define the nature of what is written in them (ibid: 29). He adds “... the expression of a discourse within a specific genre carries with it the meanings, potentialities and limitations of that genre”. In his conclusion, Kress says: “... it could be said that the relation between discourse and text is one of emergence; discourse emerges in and through text” (ibid: 39). Hatim and Mason (1990) follow and expand on Kress’ ideas on the hierarchical relations between the three concepts “genre, discourse and text”. They also place importance on the necessity of identifying the connected notions in translators’ work.

### **3.8 The Need for Integrating the Three Notions**

In this study we take the same path as Hatim and Mason (1990), as it is our intention to use the three concepts “genre, discourse and text” complementarily

---

<sup>11</sup> See Lemke, (1995: 92) and Mills, (1997: 76).

since we too, believe that it is necessary to include concepts from both the linguistic and social spheres to best explain context.

In addition to this, translation debate must address the materiality, form and structure of language in order to uphold a constructive and corrective relation between theory and practice. Many writers see the need for a multi-disciplinary tactic which brings together the “text as product” and the “discourse as process” approaches. Taber is one of the writers who hold this view and states that “...any situation which is as complex in its dimensions as the attempt to communicate through translation will of necessity call upon a number of disciplines to provide conceptual and methodological classification. Among these, at least, will be linguistics, anthropology, communication theory, sociology of knowledge, and socio-linguistics” (1980: 428).

Moreover, Wilss believes that both text and discourse are relevant to translation theory: “... register analysis and discourse analysis can and must be combined into one unified descriptive and explanative framework which can be used for theoretical as well as for didactic purposes” (1985: 229).

In the same context Hatim and Mason argue that register analysis by itself is not sufficient to give the translator solutions for translation difficulties. In their model, the translation context has three dimensions: “... the problem with register analysis, then, is that the insights which it affords into the communicative dimension of context, valuable as they are, are not in themselves sufficient ... a further dimension of context can be distinguished. It is the pragmatic dimension which builds into the analysis values relating to the ability to “do things with words”. There is, however, a third dimension which we shall call semiotic– treating a communicative item, including its pragmatic value, as a sign within a system of signs” (1990: 55-59). Furthermore, they add that the semiotic, interactive dimension of context “...takes pragmatic reading a step further and helps the reader to locate a given message within an overall

system of values appropriate to a given culture ... it is the perception of pragmatic and semiotic values such as these which enables translators to transfer the entirety of the message into their TL version”. Moreover, they warn of treating textual clues as an end in themselves in translation: “... the various activities of translation criticism, translation assessment and revision all run the risk of concentrating on features of texture without relating them to the communicative process which engendered them”(ibid).

### **3.9 Mason’s View of the Context of Translation**

From the point of view of Hatim and Mason, translation is “... a communicative process which takes place within a social context”. They perceive the translator as a problem solver who may have a social function. They recognize that language is used differently depending on “social occasion”. Their examples demonstrate that translators should obtain the “internalized” knowledge of social norms (1990: 3). This is knowledge held by those who take part in the social occasion which would enable the translator to successfully convey signs and locate himself rightly in the process of “inter-semiotic transfers”, which consists of choices and decisions restrained by semiotic categories such as genre, discourse and text (ibid: 69-75).

A hierarchical relationship between these categories is preserved and begins with the more abstract before moving to the more concrete. In their definition, “genres” are “...conventional forms of text which reflect the functions and goals involved in particular social occasions as well as the purposes of the participants in them ... Genres may be literary or non-literary, linguistic or non-linguistic, including forms as disparate as poems, book reviews, christenings, etc.”. In fact, “... some genres require ‘commitment’ in arguing for an issue while others demand “impartiality” be maintained...both the genre and the discourse of abstracts, therefore, adhere to some principle of “detachment”

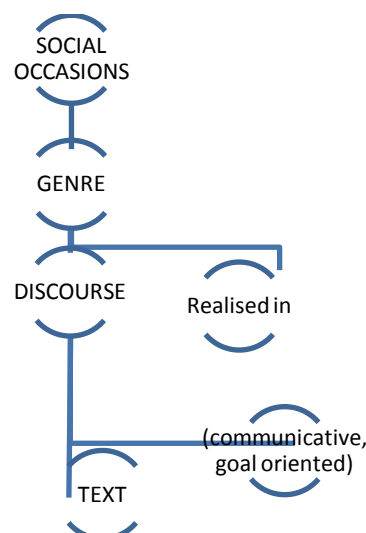


which ensures that generic meaning is conveyed. This may be illustrated by the way discursial attitudes are relayed and the text is organized” (ibid: 143).

Here, they argue that their notion of “discourse” is comparable with that which Barthes (1974: 20) calls “cultural codes”, which are “...conceptual systems which regulate the process whereby denotative meaning of an element in a text requires an extra connotative meaning. This is what happens when culture is seen as imposing itself on the text dynamically. Thus, an ideology, for example, expresses itself through a variety of key terms which take us beyond the text to an established set of precepts”.

Similarly, Kress encapsulates the relation between text and discourse by arguing “...every text arises out of a particular problematic discourse. Texts are manifestations of discourses and the meanings of discourses and the sites of attempts to resolve a particular problem”, adding “...As concrete entities, therefore, texts are the basic units for semiotic analysis” (1985: 27).

The following diagram reproduced from Hatim and Mason demonstrates the hierarchical relationship between text, discourse and genre (1990: 74).



**Figure 2: Hierarchical Relationship between text, discourse and genre**

Hatim and Mason argue that recognizing any frequently occurring patterns which might be seen as a unit of structure is not straightforward beyond the level of text. They argue that: "... discourse is diffuse and can only be analysed by relating actual expressions to the belief systems, power structures, etc. which underlie it. Translators find these to be important indicators of the attitudes to be conveyed. But, the attitudinal or ideological drift of a text is patterned in textual structures... These are the tangible linguistic units which guide the translator's work" (ibid: 186). Furthermore, it can be presumed that the "textual structure" or actual occurrences are united for a rhetorical intention which provides the text with its overall purpose, as we mentioned above. Translators must recognise this purpose in the communicative context of translation. From this point, it can be said with confidence, then, that multi-functionality is a property of texts.

Once again, Hatim and Mason (1990: 145-46), following Werlich (1976: 19), agree that Beaugrande and Dressler (1981: 184) were correct in saying that "...some traditionally established text types could be defined along FUNCTIONAL lines, i.e. according to the contribution of texts to human interaction. We would at least be able to identify some DOMINANCES, though without obtaining a strict categorization for every conceivable example ... in many texts, we would find a mixture of the descriptive, narrative and argumentative function".<sup>12</sup>

### **3.10 Legal Genre**

Taking the same path as Hatim and Mason (1990), we now turn our attention to the "legal genre". Let us assume that this "genre" contains two corresponding discourses (the "regulative" and the "informative") and that participants in these two modes of writing have various roles and attitudes. The two main tasks of communication are "regulation" and "providing information" and these are

---

<sup>12</sup> See Schiffrin, (1994: 126), Van Dijk, (1997a: 93) and (1997b: 56).

carried out in “concrete entities”, i.e. “texts”. It is presumed that texts which fall into the category of “regulative” discourse are semiotically, and thus structurally, more constrained than texts within the “informative” discourse. In addition, in these constrained texts there are presumably “established precepts” that are at work in the process of investing the denotative meanings of the constitutive elements of these texts with certain extra connotative meanings and values. In fact, one can see the culture of a particular society dynamically present in these texts, unlike in their “informative” counterparts.

What some experts believe to be the two chief functions of general language, i.e., “to regulate” and “to inform”, are the same two functions we assume to be present within this genre. Brown and Yule (1983: 2) and Stubbs (1983: 6) concur with Bennett (1976: 5) in that “... it seems likely that communication is primarily a matter of a speaker’s seeking either to inform a hearer of something or to enjoin some action upon him”.

To sum up, having thus far discussed the theoretical framework as well as introducing the legal genre, we move on in the next chapter to a discussion and review of the literature on legal translation, following which the features of legal language in both Arabic and English will also be reviewed.

## **Chapter Four**

### **1. Legal Translation**

#### **4.1 Introduction:**

This chapter will discuss legal translation based on the following scholars' works: Melinkoff (1963), Crystal & Davy (1969), Brook (1973), Turner (1973), Haeseyn and Schwaz (1977), Bhatia (1983), Danet (1985), Goodrich (1986), Maley (1987), Germar (1980-1988), Newmark (1988a, 1988b), Halliday and Hassan (1989), Hatim and Mason (1990), Bell (1991), Dabernet, (1992), Farghal and Shunnaq (1992), Varó and Hughes (2002), Crystal (2003), and Cao (2007).

Legal translation is like any other technical translation, and requires familiarity with the ST and TL material of a similar type to serve as source information and as stylistic model. The translator may need to use sources of information including dictionaries, journals and encyclopaedias to deal with difficult technical terms. According to Newmark "Technical translation is primarily distinguished from other types of translation by terminology..." (1988: 151). Such terminology undoubtedly associates with legal language which according to David Crystal "shares with science a concern for coherence and precision; and it shares with religion a respect for ritual and historical tradition". He adds: "Legal language has always been pulled in different directions. Its statements have to be so phrased that we can see the general applicability, yet be specific enough to apply to individual circumstances. They have to be stable enough to stand the test of time, so that cases will be treated consistently and fairly, yet flexible enough to adapt to new social situations. Above all, they have to be expressed in such a way that people can be certain about the intention of the law respecting their rights and duties. No other variety of language has to carry such a responsibility" (2003: 374).

Crystal goes on to explain:

Legal English has several sub-varieties, reflecting its different roles. For example, there is the language of legal documents, such as contracts, deeds, insurance policies, wills and many kinds of regulation. There is the language of works of legal reference, with the complex apparatus of footnotes and indexing. There is the language of case law, made out of the spoken or written decisions which judges make about individual cases. There is the spoken language of the courtroom, with the ritual courtesies of judges, counsel and court officials and constraints governing what counts as evidence and what may or may not be said. Legal language is unique in the way utterances are subject to sanctions, such as a fine or imprisonment for linguistic contempt of court.

Additionally, Hatim and Mason state that legal texts are a sub-category of the technical genre, given that “genre” here refers to “conventional forms of texts associated with particular types of social occasions”. These texts come in all shapes and forms. Besides the laws, by-laws and regulations, charters, protocols and treaties which govern the full range of human activity, and which regulate interaction among individuals and nations in established societies, there are also other documents which can be classified as legal texts: lease agreements, powers of attorney, contracts, court orders etc. It is clear that legal texts affect the life of all individuals living in societies. It follows also that, such legal documents such as contracts, agreements, power of attorney etc deal with all aspects of the life of these individuals and their societies (1990: 241).

In the words of Trosborg, the language of the law is “...a specific domain of Language for Specific Purposes (LSP), whose domain, in turn, can be divided into a number of sub domains presumed to involve linguistic diversification” (1997: 2). In her view it is essential to take into account the socio-pragmatic factor if we wish to identify the features which pertain to a particular communicative state inside a specific sub domain (ibid: 3). In addition to this, Trosberg points out that the communicative relationships and the roles played

by sender and receiver can use disparity in language which results in a number of secondary languages and sub domains<sup>13</sup>.

Translating legal documents has traditionally been – and will continue to be – one of the most sensitive, responsible and prestigious tasks undertaken by professional translators. The impact that an international agreement on trade tariffs, for instance, could have on the economy of signatory countries is significant by any standard. The slightest inaccuracy in translating the agreement into another language could lead either to additional levy burdens or to disputes among these countries, or to both.

The forthcoming section will discuss the key studies of law-related language, and this will then be followed by a discussion focusing on key studies of legal translation.

## **4.2 Some Key Studies of Legal Texts**

It may be said that the analysis carried out by Crystal and Davy, was the first of its kind to study the language of legal writing. Although previous works had shown the difficulties in this field, their study showed why the complicated mode of this style is necessary and identified its most frequent characteristics. Their study focuses on data from two legal documents: the first an “endowment assurance” and the second a “hire purchase agreement” (1969: 193-217).

Obviously, Crystal and Davy believe these texts to be linguistically representative in several different functions and that they have blurred boundaries. It is suggested that translation could be aided by “...identifying ... those features which are restricted to certain kinds of social context; to explain, where possible, why such features have been used, as opposed to other alternatives, and to classify these features into categories based upon a view of their function in the social context” (ibid: 10).

---

<sup>13</sup>see Gee, (1992: 75), (1999: 102) and Gee and Green, (1998: 86)

In other words, Brook (1973: 120), Turner (1973: 90) and other specialists in stylistics have characterised this “legalese” mode as being protracted, rigid, formulaic and replete with outmoded words and phrases. This is unhelpful in terms of translation, where a true and clear picture of the background behind this language is needed.

Furthermore, Danet’s outline of linguistic studies of the legal register cites important investigations undertaken in the 1970s and 1980s of legal texts that could be described as “formal” or even “frozen”. These include legislative, administrative and testamentary documents as well as jury instructions (1985: 278-287). The focus of Danet’s article then moves to an 1884 issue of the journal *Text* which comprises seven papers studying legal register in written styles of Swedish and English. Focusing on a legal English text entitled the “Assignment”, she attempts to demonstrate unique lexical, syntactic, prosodic and discourse-level characteristics. She explains that she chose this text because “...it is an extreme example... of the legal register and probably displays its features with more intensity than most written documents in British legal English” (ibid: 279).

The analysis undertaken by Maley concentrates on the language of legislation as represented in statutes (otherwise known as “Acts of Parliament”) and gives a historical and functional clarification as to why the critical and characteristic forms of legislative language endure. He attempts to show “...the extent to which legislative language is a motivated based style or register of English” (1987: 26). Maley works on the assumption that the situation can be influenced by the nature of legislation, the roles of the participants and the institutional objectives (ibid: 27). His study looks at how the choice of language can be affected or even established by the above factors and how the text which is constructed as such can itself become part of the legal process. He also analyses the definition of “infanticide” in the “New South Wales Crimes Act”, 1901,

with the aim of illustrating the “sociological” influence on the writing and understanding of legal documents. At the close of his study, Maley reflects that “...legislative discourse cannot be said to be purely or wilfully esoteric or archaic or unintelligible, as its critics often say. It constitutes a rational and functional style... more accurately; it is rational because it is functional” (ibid: 46).

In a study on the differentiation of varieties within the English language, Ferghal and Shunnaq investigate the dominant syntactic and lexical features and describe distinctive text organizing patterns in three language varieties: news items in press, legal documents and instruction manuals (1992: 204). They examine the variations within the English language, focusing on the overriding lexical and syntactic characteristics. They also study three types of language forms: news items, legal texts and instruction manuals, illustrating the organisational systems within these three variants (ibid). They assume systemic linguistics as their theory. The analysis takes the form of five inspections: “...the first one operates on units larger than the sentence and examines their relation to the sentence. The next two scans concentrate on the sentence, while the last two scans focus on the clause and units below the clause level”. All the pieces of language are genuine and show the disparity in subject, for example, “...legal texts cover contracts, regulations of a legal effect, and extracts from acts or statutes” (ibid: 47). They are all of different lengths, but each type of writing has 10,000 words. The findings are then compared and contrasted in terms of sentence complexity, logicosemantic relations, and some other syntactic and lexical variations as “...features that can act as operating factors in the design of a text type” (ibid: 205).

Proceeding Ferghal and Shunnaq, Jarjeis, in her study of legal language, there has been no linguistic investigation of professional Arabic to identify distinguishing characteristics of particular professions. She nevertheless does



not refer to contracts, statutes and regulations written in Arabic as texts which should be taken into account (cf. Musson, 2001: 75). She merely considers two textbooks on “civil law” and “international law” written by Arabic native speakers as illustrative of legal language (1992: 93).

By and large, there was no demand for the translation of legal texts before the close of the 1970s, and even then the documents in question were limited to the field of contracts and statute. In her study of legal documents translated from French to English, Meredith attempts to single out hazards and badly chosen constructions. Her work confirms that improvement is desperately required in this sphere and therefore proposes strict rules for translation (1979: 61).

The study conducted by Russell pinpoints loan words, transferred terms and English–French couplets in the legal language of Quebec, which has two legal systems (1979: 213).

Furthermore, Weston produced a thesis which, he states: “was intended as a first contribution to a semantic treatment of the legal field in French–English translation. It is based on stated principles and deals with well over 200 terms relating to the branches of French law, the courts and the legal profession” (1983: 211). In his view, Weston’s compilation of writings is adequate to show that it is possible to devise some broad theories. In this vein, he states: “...the most important general characteristic of any legal translation is that an unusually large proportion of the text is culture–specific. In such translation, the basic difficulty of overcoming conceptual differences between languages becomes particularly acute” (ibid: 207). This means that when it comes to phrases and words in the source language that are specific to a particular environment, Weston believes they can only be – in order of preference – given functional equivalents, translated word for word, borrowed, neologised, and

naturalised. In his view, the objective and the readership of the translation will determine which of the above is chosen (ibid).

Another aspect, it can be added that the function of legal language cannot be explained. Therefore, she expounds a model which according to Trosborg "...may provide for a more adequate and integrated interlingual output, as regards function, form and content" (1995: 109). In order to facilitate identification on the part of the translator, her focus is on communicative roles which play a part in 'contractual discourse'. She takes into account the realization of the communicative roles of attributing rights and duties in contracts via the use of commanding, constitutive and commissive features of speech (ibid: 14).

For instance, Vol. VIII of the Scholarly Monograph Series, published by the American Translators' Association, has the theme: Translation and the Law. It covers a wide range of topics which include efficiency in courtroom interpreting, conditions and responsibilities of translators and interpreters under the law, linguistic complications resulting from contradictory legal traditions and systems, and the instruction and experience of legal translators and interpreters. The volume was edited by Morris, who stated: "...It is sometimes said, by people who do not know, that legal translation is a mere mechanical thing, a question of formulae. The present papers demonstrate that legal translation is not a matter of mere formulae, not something that can be done in automatic fashion... This goes beyond the matter of fine distinctions, however immediately important these may be, to the crux of the matter that translations made without care for the distinct worlds and systems involved can distort understanding hopelessly" (1995: 3).

Another point of view given by Issa, who specialises in English-Arabic translation of contracts, views legal language as the most formal of all its

counterparts as well as being open and specialised. On this she states: "... it is not oriented to people at large; but rather geared to a number of audience who have gained a formal education of its nature and peculiarities". Her view point in analysing the sphere of legal contracts is that of register, and through this lens she examines the make-up and constituent parts of terms of contracts and the linguistic features therein (1997: VI).

Issa seems to agree with Trosborg in that "... a translation of contracts ... is intended to serve a purpose similar to that of the original, though as a means of communication in a different linguistic and cultural setting" (1997: 2). From here, Issa conjectures that "...the standard format, technical terminology, syntax as well as the formal register of the TL is to be respected in dealing with documents that are to be concurrently valid in the TL community such as contracts". In spite of this, she does not consider the possibility of the TL Arabic contracts having their own mode and register, but instead concentrates exclusively on SL English texts. Moreover, she presupposes that literal translation is preferable for contracts (ibid).

Accordingly, the ST is given priority over the target language and the focus of the "comparative description" is on demonstrating the translation of predominant characteristics of English into Arabic. Possible variation between the two structures of law is not taken into account.

#### **4.3 Law as a Specialised Language**

The terminology and discourse of legal spheres are primarily classed as "specialised" or "technical" language rather than "general language". However, it is difficult to define what exactly is meant by "general language". Frequently, it is left to the individual to decide what "everyday" language is. Haeseryn attempts to define it as "the standardised form of a certain language used in mass media, education, administration.....". Both Haeseryn (1977) and Schwarz

(1977) distinguish between everyday and specialist language. Schwarz compares technical with common language and defines the latter as a lexical subsystem within a “natural language” which is understood by all who use this language. In comparison, legal language is not understood by all but is the domain of experts in a specific law-related environment. This is what, in general terms, defines it as “specialised” and as being used and understood by specialists within a particular environment (1977: 19-22).

Haeseryn (1977) defines specialised language as a type of language which is used in particular areas of expertise. It has its own special characteristics in vocabulary and perhaps also in syntax and style. Haeseryn prefers the term “specialised language” because this includes topics such as economics, sociology, law, linguistics, etc as well as the exact and applied sciences. Haeseryn considers administrative language to be “general”, whereas Schwarz classes it as “technical” like legal language. This indicates how difficult it can be to separate one type of language from another. Varieties of language such as scientific and legal may be comparatively easy to define because of their terminology and style. However, all types of legal texts may share several features with an administrative government document, and this makes them difficult to separate. This brings us back to the problem of defining register. However, all types of legal language share particular grammatical features whose function is to set out the law or legal requirements (1977: 103-6).

#### **4.4 Legal Text-Types**

In general, text is defined by Halliday and Hasan as “language that is functional” or “language that is doing some job in some context, as opposed to isolated words and sentences” (1985:10). The text, however, must be regarded as a semantic unit and a product and process the meaning of which is conveyed by words and sentences. “The text is a product in the sense that it is an output, something that can be recorded and studied, having a certain construction that

can be represented in systematic terms. It is a process in the sense of a continuous process of semantic choice, a movement through the network of meaning potential, with each set of choices constituting the environment for a further set” (ibid ). They add that the text is also an “instance of the process and product of social meaning in a particular context of situation”. Thus, legal texts are the communication medium in law-related environments.

Legal language therefore, is distinguished from general language. In the next few paragraphs, definitions of functions will be examined under functional theory in order to sub-divide legal texts. According to Halliday and Hasan, the three main roles of a text are ‘ideational’, ‘interpersonal’ and “textual” (ibid). However, Newmark suggests that these roles are the “informative”, the “expressive” and the “vocative” (1988: 41).

In Newmark’s work, there are also the secondary “aesthetic”, “phatic” and “meta lingual” functions, and there are suggestions about how particular legal texts should be used. For example, it is recommended that statutes and legal texts should be regarded as ‘authoritative statements’ which are said to be “expressive” text-types. However, Newmark and Halliday and Hasan stress that although a text may be predominantly expressive, informative or vocative it will not be exclusively so (ibid).

Furthermore, the advantage of Newmark’s functional typology, Bell, argues that “(I)t makes it possible to list text-types under each function and, in the case of informative function, distinguish “topic” from “format”.(for example, Informative; scientific textbook)” (1991: 204).<sup>14</sup>

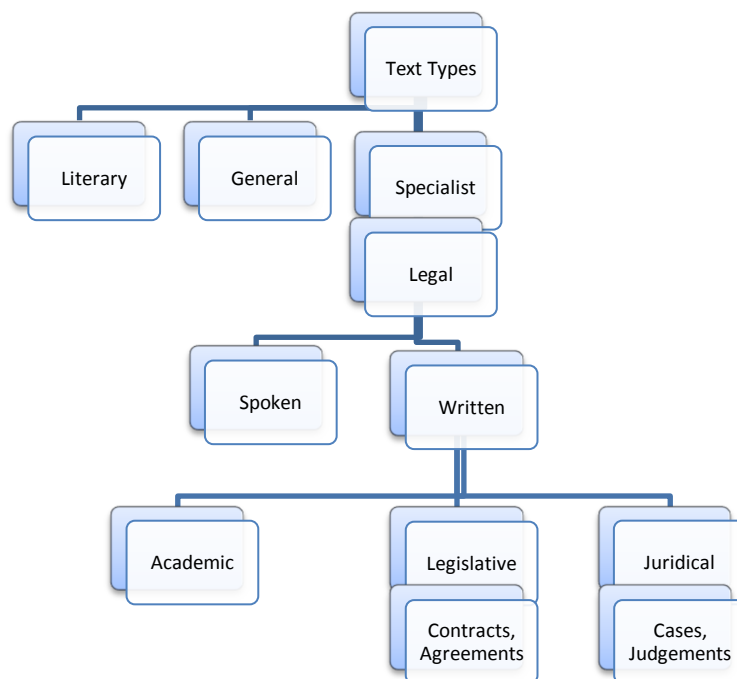
In G  mar’s classification, legal texts fall into four broad categories: (1) loi et reglement, (2) jugements et actes de procedure, (3) actes juridiques (contrat,

---

<sup>14</sup>G  mar (1988), Goodriche (1986) and, in particular, Bhatia (1993, 1987 & 1983) provide more in-depth examinations of the subdivisions of legal texts.

testament), and (4) doctrine. This helps to assess the level of difficulty and the responsibilities of the translator (1988: 310). Bhatia puts forward a similar categorisation and describes the term “language of the law” as encompassing several usefully distinguishable genres depending upon the communicative purposes they tend to fulfil, the settings or contexts in which they are used, the communicative events or activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors (1987: 227). His preferred term is “genre” rather than types or register.

It is possible to divide genres according to their lexico-grammatical, semantico-pragmatic and discoursal categories. The following figure illustrates how written discourse may be divided into three types:



**Figure 3 Classification of Texts**

Primarily, texts are divided into three categories – General, Literary and Specialist - using a criterion similar to Halliday’s concept of field. This thesis focuses on specialist language which can be sub-divided into categories such as legal text, which is the main concern of this thesis. Legal texts are in turn

divided into written mode or spoken mode, and then into academic, juridical or legislative language.

## **4.5 Features of Legal Discourse**

Legal discourse has distinctive features which can be categorised into three main parts; lexical, syntactic and textual:

### **4.5.1 Lexical Features**

In his book *The Language of Law*, Melinkoff discusses how Latin and French have influenced English legal language and how the desire for precision has given it a complex and distinctive nature. Certain words and phrases are used to make sure that there is no room for misinterpretation. These include terms such as “tort”, “alibi”, “appeal”, “bail”, “defendant”, “landlord”, and “plaintiff”. These words are known as “terms of art” – that is, words on which lawyers have agreed there can be no argument as to their meaning. Among these ‘terms of art’ are also legal French and Latin words, e.g. “estoppel”, “fee simple”, “res judicata” and “ratio decidendi” (1963: 14-15).

Another way to make sure legal language is accurate is to use a limited number of verbs to designate speech acts. Verbs which occur frequently include “deem”, “accept”, “require”, “issue”, “state”, “specify”, “constitute”, “perform” or “observe”, “exercise”, “provide”, etc. Crystal and Davy argue that terms such as “valid” and “damage” are not sufficiently precise to qualify as “terms of art”. Other imprecise and stretchable words like this include “adequate”, “and/or”, “due care”, “intention”, and “malice”. They add to this that in legal language there is a large number of collocations of adverbial and preposition-like words such as “aforesaid”, “hereinbefore”, “hereto”, “herewith”, “heretofore”, “therein”, and “thereunder”. The above are cohesive devices used in legal language[s]. Along with antiquated verb forms such as ‘witnesseth’ and ‘doeth’, they form a link with the past and add an air of formality to the discourse (1969: 66). Similarly, Dabernnet divides legal vocabulary into two core groups:

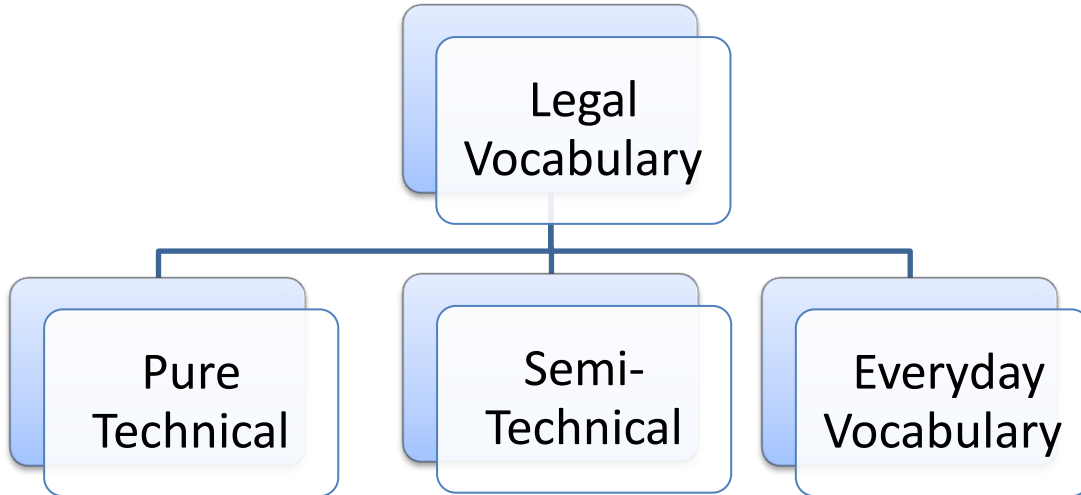
technical vocabulary which contains technical terms, and support vocabulary which comprises less or non-technical words which link the technical words together. He stresses that the importance of support vocabulary should not be underestimated as such words can influence the meaning of the text (1979: 26-34). However, G  mar divides all the terms into three categories: 1) legal vocabulary; 2) support vocabulary; and 3) general language, e.g. articles, pronouns and adjectives taken from the general language (1980: 883).

Another considerable detailed classification is introduced by Var   and Hughes where they classify legal terminology along the same lines. According to them, “the greatest single difficulty encountered initially by legal translators is the unfamiliarity of the vocabulary characteristic of this type of discourse”. Then, they divide lexical items into two groups (2002: 16). The first comprises “symbolic” items, which are the terms which have a legal meaning such as “tort”, “court”, “guilty” etc. which they sub-divide into three groups, as shown in the diagram below: pure technical, semi-technical and everyday vocabulary. The second group comprises “functional” items, which are terms such as “hereinafter”, “whereas”, “under”, “in view of”, etc. (ibid).

Cao also seems to agree with Var   and Hughes that “legal terminology is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents” (2007: 53). Due to the systemic differences between Arabic and English, there can be a lack of equivalence in terminology causing both linguistic and legal complications. Cao discusses four terminological areas that many cause problems in legal translation: “legal conceptual issues and the question of equivalence and non-equivalence of legal concepts in translation; legal terms that are bound to law and legal institutions; legal language as a technical language in terms of ordinary vs. legal meanings, and legal synonyms”; and finally ‘terminological difficulties arising from linguistic uncertainty such as vagueness and ambiguity’ (ibid: 54).



It can be seen from the diagram below that legal terms are classified under the following headings: i) Pure Technical, ii) Semi-technical and iii) General terms:



**Figure 4 Classification of Legal Terminology**

This thesis follows their arguments and treats terminology as the main issue in translating legal texts.

It can be helpful to contrast the differing purely technical vocabulary applied respectively in civil and criminal courts, for example, “المدعي” (al-muda‘ī-plaintiff) versus “الادعاء” (al-‘idi‘ā-prosecutor), “مسئول” (mas’ūl-liable) versus “مذنب” (mudhnīb-guilty), “الاضرار” (al-aḍrār – damages) or “الاجراءات المدنية” (al-‘ijrā‘ā āl-madanīyya - civil remedy) versus imprisonment “السجن” (as-sijn-jail) or “عقوبة” (‘uqūba-punishment).

Other pure Arabic legal technical terms which are used regularly in contracts can be illustrated together with their English possible counterpart as follows:

“حكم/مرسوم” (ḥukm/marsūm-decree), “رهن” (rahn-mortgage), “إيجار/كراء” (‘ījār/kirā’-lease), “مالك العقار” (mālik al-‘aqār-landlord), “فيما بعد” (fīmā ba‘d-hereinafter), “المؤجر” (al-mū’ajjar-tenant), “استئناف” (isti’nāf-appeal), “احالة

”الدعوى” (ihālat ad-da‘ūa- committal proceedings), ”قاضي الصلح” (qaḍī as-sulḥ), ”محكمة” (maḥkama-court/tribunal), ”ادانة” (idāna-conviction) etc.<sup>15</sup>

Some of the terms mentioned above are subject-specific terms such as contract terms, court procedure etc.<sup>16</sup>

Semi-technical terms are usually not common in general language. They can be used in both legal language and normal daily life. This can be noticed in the example above, the term “consideration” in contract. For instance, in law, one meaning of “consideration” is an act or a promise which is made when making the contract and “one party has made a promise in exchange for which the other party has done something” (Black’s Law Dictionary, 1999). Without “consideration” the contract has no legal binding. The semi-technical term is used in relation to payment, usually with as a prepositional phrase ‘in consideration of’, as in the phrase ‘in consideration of rent fees to be paid monthly’ which can be translated into Arabic as ”مقابل دفع ايجار شهري”, which basically means “in payment of” (Faruqi’s Law Dictionary, 2006).

#### **4.5.2 Standardization of Legal Terms**

One of the most significant obstacles to the advancement of the linguistic register is the difficulty of unifying the translation of linguistic terms (cf. Al-Omar, 1997: 5). It is thought that works by linguists, lexicographers and translators must be synchronized based on a methodological record of Arabic linguistic tradition, which must in turn be logically organized and classified (cf. Ibn-Abdallah, 1976: VI). Sager believes that standardization of terminologies would help develop Arabic linguistic register as well as offering solutions to some translation problems. Standardisation provides more precision and appropriateness (1990: 15).

---

<sup>15</sup>For more examples of legal terms, see chapters Five and Six.

<sup>16</sup>Chapter Six covers a full analysis for various examples translated from Arabic into English, showing how legal terms can be a major source of problems in translation.

Some Arab scholars and academies have attempted to unify specialist terminology independently; but if these efforts are not fully synchronised then they merely add to the problem. In response to this predicament, attempts were made to found the “Coordination Bureau of Arabization”, which in 1989 issued *The Unified Dictionary of Linguistic Terms*. The Bureau of Arabization was established in Syria by an agreement with the Arab League Educational, Cultural and Scientific Organization (ALECSO), which is based in Tunis. The idea behind the dictionary was to create Arabic terms of foreign words, especially in science, in order to “enrich Arab culture through the translation of works of foreign origin and share Arab achievements through the translation of Arabic works in the fields of science, art and literature into widely-spoken foreign languages” ([www.acatap.org](http://www.acatap.org)). The dictionary was criticised by some scholars such as Hassane Darir on the grounds that it is, “far from providing a unified set of linguistic terms, proves to contain too many shortcomings”(ibid).

#### **4.5.3 Rarity of Legal Arabic-English Dictionaries**

The translation of legal documents such as contracts, treaties etc., involves serious legal risk and it could cost companies millions just because of mistranslating a term. Adequate bilingual legal dictionaries are translation tools which could minimize this kind of risk, ideally by conveying legal consequences which reliably approximate those worded within the document to be translated. Since full equivalence only exceptionally occurs, as has been elucidated earlier in this chapter, it is of the utmost importance that bilingual dictionaries make clear as precisely as possible, which acceptable equivalent has to be used, and also how it has to be used in the target language. Legal translators of Arabic texts into English suffer from the lack of Arabic – English legal dictionaries. The only Arabic-English legal dictionary available is Faruqi’s Legal Dictionary. In Faruqi’s dictionary preface, Faruqi states that “the fundamental objective sought is to provide to the Arab lawyer and student of

jurisprudence and to the Arab businessman who, by virtue of his foreign legal and business relations, can ill afford indifference to legal terminology, a bilingual dictionary in the pattern of modern English and American dictionaries’’ (Faruqi, 2006: 1-2). It can be noticed that the dictionary is a specialised one aimed at students and lawyers, but not at professional translators. A professional legal dictionary should provide translations based on legal areas and systems, especially in cases where the two legal systems are completely different. Hence, there is a pressing need for a high-quality Arabic – English dictionary which can be designed for the benefit of professional translators, to help them achieve as close equivalence as possible

#### **4.5.4 Syntactic Features**

The following sub-sections discuss some of the syntactic features of English and Arabic legislative texts. In the words of Goodrich, “the draftsman is instructed to deal with every small point, block every loophole, tie up every loose end” (1986: 52). This could result in “the form of very long and complex sentences incapable of standing alone” (Bhatia, 1993: 200). According to Crystal and Davy, English legal language is distinguished by long, complicated nominals which are in noticeable contrast with verbal groups. Moreover, this language uses more post-modification in nominal groups and non-finite clauses as post-modifiers than it uses pre-modification and finite clauses. Phrases such as “any instalment then remaining unpaid” or “the rent hereinbefore reserved and agreed to be paid during the term” are frequently used. Post-modifying elements are sometimes used for precision, as for example in “the payment to the owner of the total amount” (1969:205).<sup>17</sup>

---

<sup>17</sup> Arabic, like English, also uses long complicated nominal sentences in legal documents starts with “اسم الفعل” (ism al-fi‘l-verbal noun). Moreover, Arabic is mostly verbal, and so we find examples such as “يتعهد الطرف الاول” or “يلتزم الطرفان ببنود الاتفاقية” (see Chapter Five and Chapter Six for further details and examples).

Another method is what Bhatia calls “textual mapping devices”, which are “discoursal strategies which serve primarily a text-cohering function relating one aspect of the text to another, either in the same act or in some other, thus helping the draftsman to reduce information load at a particular point in the expression of the legislative content” (1993:141). Common in early British legislation, the “proviso clause” (a clause in a bill that sets out specific exceptions to the general law) sets out the main case and situation and any exceptions to it. It makes the sentence very long, and draftsmen now prefer to break it up into smaller sections (ibid).

Another syntactic feature of legal texts is passive. Passive structures are also common in both English and Arabic legal texts. Halliday and Hasan explain that the choice of the passive in any language relates to the textual function of the language. The Arabic passive is described by grammarians as “an agentless construction” (1970: 322-361). Certainly, both legal Arabic and English make use of the passive voice<sup>18</sup>.

The Present Simple tense and modality are also quite common in both English Arabic legal languages. According to Palmer, modality in English has two types: “propositional” and “even” modality. Propositional modality can be divided into “epistemic” and “evidential”. He adds that “the essential difference between these two types is that with epistemic modality speakers express their judgements about the factual status of the proposition, whereas with evidential modality they indicate the evidence they have for its factual status”. Even modality, according to Palmer, is classified into: “deontic” and “dynamic”. Palmer points out that “deontic modality” relates to obligation and permission (2001: 8). This type of modality is commonly used in legal English.

At the same time, modality in Arabic is also divided into “deontic” and “epistemic”. Holes points out that “in Modern Standard Arabic, mood and modality are intimately bound up. Mood inflection is always marked in the

---

<sup>18</sup>see Chapter Five for further details and examples

prefix-stem, and is frequently a morphological correlate of modal meaning of one kind or another, expressed lexically elsewhere in the sentence” (1995: 181).<sup>19</sup>

#### **4.5.5 Textual Features**

Scholars agree as will be discussed below that cohesion is one of the most significant constituents of the text. It can be achieved via certain cohesive devices such as conjunctions, referring expressions, ellipsis, substitution, repetition, and parallelism. Arabic and English deal with cohesion devices in different ways:

##### **4.5.5.1 Layout Features**

Legal documents such as treaties or resolutions usually consist of four main parts: i) Preamble “ديباجة-dībāja”, ii) Initial Article “فاتحة-fātiḥa”, iii) Articles “مواد-mūād”, and iv) Concluding Article “خاتم-khātima” (Hatim (1997: 14). Other types of legal documents such as contracts are usually divided into two main sections: the preamble and the general provisions. The preamble usually consists of i) subject, ii) location, date, and parties’ names, and iii) the “witnesseth”, which is the main clause. The general provisions consist of the main Articles of the contract. The document usually starts with the definition of terms, especially in the case of commercial contracts. The layout of such documents in Arabic and English is similar. However, headings are usually written in larger fonts and maybe in capitals in English; Arabic, however, lacks capitalisation. Hatim states that each section of the legal document has a “language” of its own which is essentially of a formulaic nature. The translator must therefore be acquainted with these conventions in both English and Arabic (1997: 14).

---

<sup>19</sup>Examples of English and Arabic modality are explained below in Chapter Five

#### **4.5.5.2 Sentence Length**

Legal sentences in English/Arabic are usually long and complex. Contracts, for example, often use one long sentence which can be hard to read (Bhatia, 1994: 143). Holes states that English uses sentence breaks, while Arabic generally uses the connector (wa = and) between sentences (1995: 217). This is also emphasised by Danet (1985: 281), who points out that an English legal sentence is twice as long as any scientific English sentence.<sup>20</sup>.

#### **4.6 Lexical Cohesion**

Lexical cohesion is the “cohesive effect achieved by the selection of vocabulary” (Halliday and Hassan, 1976: 274). It can be divided into: lexical repetition and morphological repetition:

##### **4.6.1 Lexical Repetition**

Lexical repetition is commonly used in both Arabic and English legal language to avoid ambiguity (Tiersma, 1999: 72). It is also used to connect sentences together. This type of repetition is common in both Arabic and English. For instance, there are two types of lexical repetition<sup>21</sup>: i) word repetition which is the repetition of a single word, and ii) phrase repetition in which the whole phrase is repeated (Dickins, Harvey and Higgins, 2002: 108-9).

##### **4.6.2 Morphological Repetition**

Another type of repetition in both Arabic and English is morphological repetition. Three main types are distinguished: i) pattern repetition, ii) root repetition and iii) suffix repetition (ibid: 107).

#### **4.7 Specific Aspects**

There are some other cohesive devices also used in legal texts. For instance, anaphoric devices are not often used in legal language, although “this”, “that” and the various forms of the verb “do” are sometimes found. However, these

---

<sup>20</sup>see Chapter Five for further details and examples

<sup>21</sup> For more details see Halliday and Hasan, 1976: 278.

devices can lead to ambiguity and confusion because it is not always clear what they refer to. So it is better for the translator to stick to the original text as much as possible in order to avoid vagueness and ambiguity.

Another common device is the archaic reference. It is also common in legal Arabic and English. Terms such as “المذكور أعلاه” and “الموقع أدنا” are commonly used in legal Arabic. English archaic terms are used more often in legal English. Examples of these are “herein”, “hereafter”, “aforesaid” and the like. Such terms in both Arabic and English can cause ambiguity in translation as they do not specify what they refer to. “المذكور أعلاه”, for example, does not refer to a specific subject mentioned earlier (Mellinkoff, 1963: 305).

#### **4.8 Translator’s Competence**

Translating legal texts is not an easy task, especially between two very different languages such as Arabic and English. Therefore translators from Arabic into English must have a set of competencies in order to enable them to translate as precisely as possible. These competencies are: i) legal background competence, ii) language competence, and iii) cultural competence.

##### **i) Legal Background:**

In order for the translation to be as precise as possible, the legal translator requires translation skills as well as legal training. Brackeniers suggests that lawyer-linguists should attend special translation courses to allow them to have a legal background in both law and translation. This can be achieved at the university level, where legal translation specialised courses can be introduced for translation students. Such a course has been already introduced at Ottawa Faculty of Law and the School of Translation and Interpreting (in Šarčević, 1997: 115). The programme is designed to train professionally both law and translation students, so as to make them equally professional. The programme teaches law students 24 credits in language, translation and terminology, whereas translation students are taught the basic concepts of law (ibid). Such



programmes and training can improve the quality of legal translation and reduce any legal risks that may occur between English and French.

ii) Language Competence:

Translators must have competence in both languages in order to be able to translate the ST into the TT. They should master language from the whole aspect because the ST is a unit of meaning and not just words or sentences. Moreover, the translator must also have a good theoretical background in translation as Newmark states that all translations are implicitly based on a theory of language. The translator should therefore master the function of language as a whole (1988: 39).

iii) Cultural Competence:

The translator must also have cultural competence with respect to both source and target languages (Kastberg, 2007). The SL may have different ways to express the meaning which can be sometimes hardly translated into the TL. This is the case in Arabic and English, where some expressions used in an Arabic text may not have the equivalent terms in the English culture. Therefore, the translator must find the equivalents (see section 3.2) in order to convey accurately the sense intended by the ST author. The translator of Arabic text into English has to deal with various cultural aspects, since the two cultures are completely different.

It can be concluded that having studied legal language and specialised text, as well as the lexical, syntactic and textual features of both Arabic and English legal discourse, it is necessary for us now to study the differences and similarities between Arabic and English legal texts. This will be dealt with in the next chapter.

## **Chapter Five**

### **5. Comparison between Arabic and English Legal Texts**

#### **5.1 Introduction**

Legal discourse is characterized by the use of words, syntax, and style that is peculiar to itself. The difficulty in translating legal discourse arises from the differences between two different legal systems and two different languages. The nature of technical language and the basic aspects of register known as “field”, “mode” and “tenor” as they apply to legal discourse combine to make the translation process a difficult task (Hatim and Mason, 1990: 50).

This chapter will draw attention to some general points as a prelude to the detailed analysis of specific texts in Chapter Six. It will address first of all, with explanatory examples whenever possible, the three categories of legal register: “field”, “mode” and “tenor” of discourse (ibid). It will then provide a review of the similarities and differences between Arabic and English legal discourse. Three main features of legal discourse will be covered: lexical, syntactic and textual features.

#### **5.2 Legal Register**

In terms of register, we can analyse legal discourse under three headings: field of discourse, mode of discourse, and tenor of discourse.

##### **5.2.1 Field of Discourse**

Field of discourse, an integral part of the theory of register in neo-Firthian linguistics, is commonly represented as one category of varieties description (Gregory 1967, Benson and Greaves 1973, Halliday 1978). Thus, Gregory and Carroll (1978: 7) introduce field, together with the categories of mode and tenor of discourse, as follows: in a general sense they are all related to the role being played by the user in the language event. They “refer to the institutional setting

in which a piece of language occurs”. Field of discourse is the consequence of the user's purposive role, what his language is "about", what experience he is verbalizing, what is "going on" through language. Mode of discourse, on the other hand, has to do with the degree of writtenness or spokenness of a text, while tenor accounts for points along the scale of formality to informality, and for “what the user is trying to do with language (in a sense that is different from the purposive-role/field-of-discourse factors) for, or to, his addressee(s)—whether he is teaching, persuading, advertising, amusing controlling, etc” (ibid: 8).

According to Halliday, “there is not a great deal one can predict about the language that will be used if one knows only the field of discussion or only the mode or the tenor. But if we know all these we can predict quite a lot”(1978: 33).

The field in the following example, translated by Hatim, Shunnaq and Buckley, is the literature of a “حجة وصايا” (ḥujjat waṣāiyya-certificate of guardianship). The fact that there is a preambular section and an operative section explains the field of discourse as an Islamic legal provision written in the form of a declaration dealing with legal guardianship by a “محكمة شرعية” (maḥkama sharʿiyyaa-religious court) (1995: 84):

#### Text 1 (ḥujjat waṣāiyya/ حجة وصايا)

حجة وصايا  
في المجلس الشرعي المعقود لدي أنا ----- قاضي ----- الشرعي عينت ونصبت ----- ابن/ابنة  
----- من سكان ----- وصياً شرعياً ومتكلاً مرعياً على ----- المرحوم ----- على أن لا  
يحق للموصي المذكور بيع شيء من ----- ورهنها وتأجيرها ولا يوكل وكالة عامة ولا يقبض  
مبلغاً من المال باسم ----- أكثر من خمسة وعشرين ديناراً إلا بإذن خطي شرعي من المحكمة  
وقد تحقق إلينا أهلية وأمانته وأن والد ----- توفي دون أن يقيم ----- وصياً شرعياً ولا  
وصياً مختاراً من قبله وأن القاصر ----- دون سن البلوغ والرشد وليس ----- ولي أب ولا جد  
لأب تتوفر فيه الأهلية ولا وصي مختار وذلك باخبار كل واحد من ----- وقد أوصيت بتقوى  
الله تعالى والقيام بشؤون هذه الوصاية بما فيه الحظ والنفع لجهة -----  
فقبل ذلك مني وتعهد بالتزامه حسب الله تعالى.

### Certificate of Guardianship

In the Legal Council convened in my presence, I-----, the Religious Judge of ---- appointed and installed Mr. ----- resident in ----- as legal guardian and competent spokesman on behalf of ----, son/daughter of the deceased Mr. -----, on condition that the said guardian may not sell any ----- nor mortgage nor lease these, nor authorise general power of attorney, nor receive a sum of money in the name of ----- greater than twenty five dinars except by written legal authorisation from the Religious Court. His eligibility and honesty have been confirmed in our presence, and the father, Mr. ----- of -----, has died without appointing a legal guardian or choosing a guardian for him/her, and the legal minor-----is below the legal age of maturity and has no chosen or eligible guardian whether father or grandfather. This is confirmed by ----- . I have enjoined that guardian to be Godfearing and to perform all tasks related to this guardianship in the interests and in the benefit of ----- . He has accepted this from me and undertaken to fulfil his obligation, may God be his sufficiency.

Here, words such as “محكمة” (maḥkama-court), “وصياً شرعياً” (waṣiyyan sharʿiyyan-legal guardian), “رهن” (rahan-mortgage) , “وكالة عامة” (wakāla ʿāmma- general power of attorney), “قاضي” (qāḍī-judge-magistrate), “مجلس شرعي” (majlis sharʿī-legal counsel) illustrate the kind of subject that is manifested in the field of discourse, i.e. it is a legal subject dealing with legal guardianship.

By the same token we can assume that in the Constitution of Jordan, given as an example below, the field of discourse is norms, institutional rules and legal provisions written in the form of a constitution that regulates and organises the social, economic, political, religious, and military policies of a country. As with any other legal document, constitutions consist of preamble and operative sections. The following example is from the Jordanian Constitution with the official English translation quoted in Dickins, Hervey and Higgins (2002: 197):

## Text 2 Jordanian Constitution

نحن طلال الاول ملك المملكة الاردنية الهاشمية بمقتضى المادة الخامسة والعشرين من الدستور وبناء على ما قرره مجلسا الاعيان والنواب نصدق على الدستور المعدل الآتي ونأمر بإصداره
We Talal the First King of the Hashemite Kingdom of Jordan in accordance with Article 25 of the Constitution, and in pursuance of resolution of the Senate and House Deputies, do hereby give my assent to this revised Constitution and command that it be put into effect

Here, it can also be said that there are certain constructs and word formations such as “نصدق على الدستور المعدل” (nuṣaddiq ʿalā ad-dustūr al-muʿaddal-I hereby give my assent to this revised Constitution) and the present tense verbs that imply imperative mood such as “نأمر بإصداره” (naʿmur biʾiṣḍāriḥ-and command that it be put into effect), which demonstrate the field of discourse as a legal subject, namely, a constitution.

Each legal document in both Arabic and English, whether “دستور” (dustūr-constitution), “قرار” (qarār-resolution), or “معاهدة” (muʿāhada-treaty) etc. consists of four main parts: “ديباجة” (dībāja-Preamble), “فاتحة” (fātiḥā-an Initial Article), a set of “مواد” (mawwād-Articles) and a “خاتمة” (khātima-Concluding Article) (Hatim, 1997: 14).

In addition, Dickins, Hervey and Higgins (2002: 196) state that “the preamble does not form part of the constitution as such, and therefore does not have the same status as the constitution itself”. They add that “preamble” is usually translated into “فاتحة” (fātiḥā-an Initial Article) and that the English preamble usually does not have it as a title line as in the United States Constitution. Preambles, they point out, often begin with a first-person plural subject (ibid: 196-7). The example is from the United States Constitution, quoted in Dickins, Hervey and Higgins (ibid):

### Text 3 United States Constitution

WE THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE THE GENERAL WELFARE, ....

For example, the Libyan Constitution however, does have the “فاتحة” (fātiḥa-preamble) or “مقدمة” (muqaddima) as a title line. Consider the following example:

### Text 4 The Libyan Constitution

مقدمة

نحن ممثلي شعب ليبيا من برقة وطرابلس الغرب وفزان المجتمعين بمدينة طرابلس فمدينة بنغازي في جمعية وطنية تأسيسية بإرادة الله<sup>22</sup>.

Here the main part of such legal documents either in Arabic or English is a set of Articles. In Arabic, the tense used is mainly the imperfect. The following example is taken from the Emirati Federal Law:

### Text 5 UAE Federal Law

مادة 4

لا يجوز استخدام غير المواطنين بقصد العمل في دولة في دولة الامارات الا بعد موافقة دائرة العمل.

مادة 5

يجوز لوزارة العمل إلغاء بطاقة العمل الممنوحة لغير المواطن إذا ظل العامل متعطلاً عن العمل مدة تتجاوز ثلاثة أشهر متوالية.

مادة 6

يجب على صاحب العمل قبل تشغيل أي حدث أن يستحصل منه على موافقة كتابية ممن له الولاية أو الوصاية على الحدث<sup>23</sup>.

<sup>22</sup>From the 1951-1969 Libyan Constitution.

<sup>23</sup>UAE Federal Law No. (8) of 1980

Others may not be employed in the United Arab Emirates except as provided for in this Law and its executive orders.

The Ministry of Labour and Social Affairs may cancel work permits granted to non-nationals in any of the following cases:

- a. If the employee remains unemployed for a period exceeding three consecutive months.
- b. Before a juvenile is employed, the employer shall obtain a written consent signed by the juvenile's guardian, or custodian.

The above text shows how modality is used legal English which shows “may”, “shall” or “must” plus verb. For more detailed analysis of modality in both legal Arabic and English see section 5.3.2.32 in this chapter.

### **5.2.2 Mode of Discourse**

Mode of discourse is considered one of the main features which distinguish legal discourse from other types. According to Hatim and Mason, Mode of Discourse “refers to the medium of language activity” (1990: 49). Due to this, all the texts above (the Constitution of Libya, United States, Jordan etc.) can be said to have been written to be read and scrutinised closely and reflectively as they usually have a different style from the ordinary language we use, and contain information and rules that might not be read as easily we as read, for instance, newspapers or stories.

### **5.2.3 Tenor of Discourse**

Tenor is another feature of legal discourse which is distinguished by its formality therefore, tenor “refers to the relations among the text producers and receiver, especially at the level of formality” (Farghal and Shunnaq, 1999: 160).

It can be said that there is a high degree of formality as far as the tenor of discourse is concerned. This is justified by the nature and purposes of such

texts, as they usually set out fundamental principles and objectives (e.g. in the Constitution), and lay down rights and obligations.

The following example is taken from the Real Estate Register in the Emirate of Dubai, with the official translation:

**Text 6 Article 4 of Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai**

المادة 4  
لا يجوز للمطور الرئيسي أو الفرعي البدء في تنفيذ المشروع أو وحداته على الخارطة قبل استلام الأرض التي سيقام عليها المشروع والحصول على الموافقات اللازمة من الجهات المختصة بالإمارة. وفي جميع الأحوال على الدائرة أن تضع على صحيفة العقار الذي يجري تطويره إشارة تفيد بذلك<sup>24</sup>.

**Article (4)**

No Master Developer or Sub-Developer shall commence a project or sell its units off plan before taking possession of the land on which the project is to be built and obtaining the necessary approvals from the Competent Authorities in the Emirate.

In all cases, the Department shall indicate in the relevant folio of the register that the Real Estate is under development.

In the above example Text 5, indications of formality can be detected in the use of legal expressions such as “لا يجوز للمطور الرئيسي” (lā yajūz lilmuṭawwir ar-ra’īsī- No Master Developershall...), “الجهات المختصة” (al-jihāt al-mukhtassa- Competent Authorities), “على الدائرة أن تضع...” (‘ala ad-dā’ira an taḍa’-the Department shall indicate). The following example is taken from the Real Estate Register in the Emirate of Dubai, with the official translation:

<sup>24</sup>Article 4 of Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai.



**Text 7 Article 10 of Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai**

المادة 10  
يحظر على المطور أو الوسيط إبرام عقود بيع عرفية لبيع عقارات أو وحدات عقارية على الخارطة في مشاريع لم تتم الموافقة عليها من الجهات المختصة، ويقع باطلاً كل عقد يبرم قبل الحصول على تلك الموافقة<sup>25</sup>.

**Article (10)**

The developers or the broker cannot conclude informal contracts for the sale of Real Estate and Real Estate Units off plan in projects that have not been approved by the Competent Authorities. Every such contract made without such approval will be void.

In Text 6 above, high formal constructs can be noticed such as “يحظر على المطور” (yaḥḍur ʿala almuṭawwir-the developers cannot...), “إبرام عقود بيع عرفية” (ibrām ʿuqūd baʿ ʿurfiyya-conclude informal contracts), “يقع باطلاً” (yaqaʿ bāṭilan-will be void).

The translator however, did not succeed to convey the exact Arabic formality into English. The verb “يحظر” (yaḥur) is used in Arabic legal language to express “prohibition”. Legal English normally uses (shall not) to render such a verb (Sabra, 2005: 98).

According to Faruqi’s Law Dictionary, the English equivalent term of “عقد عرفي” (ʿaqd ʿurfi), is “simple contract” (عقد بسيط-ʿaqd baṣīṭ); however, it is translated as “informal contract” in the text above. A more formal legal English lexical item is “parole contract” which describes any contract “made solely on word of mouth, or a particularly written contract; collateral contract or an express contract that is not based upon a deed” (Black’s Law Dictionary). Furthermore, the legal Arabic “إبرام عقود” (ibrām ʿuqūd) is translated in the text

<sup>25</sup>Article 10 of Law No. 13 of 2008 Regulating the Interim Real Estate Register in the Emirate of Dubai.

above as “conclude contract”. The English legal term which is normally used in legal contracts is “to enter into” or “to sign” a contract or agreement (Black’s Law Dictionary, 1999).

Finally, the legal Arabic phrase “يقع باطلاً” (yaqa° bātilan) is rendered as “will be void”. A better translation which is commonly used can be “is null and void”, which means that the contract is no longer valid. Using the lexical item “will” in legal text is usually not common, and “shall” is used instead. In most contracts the verb “to be” is used in such a case. The following example is from Emirati law, Article 7, Federal Law No 8, 1980:

#### **Text 8 Federal Law No 8, 1980**

مادة (7)  
يقع باطلاً كل شرط يخالف أحكام هذا القانون ولو كان سابقاً على نفاذه ما لم يكن أكثر فائدة  
للعامل.<sup>26</sup>

#### **ARTICLE (7)**

Terms inconsistent with the provisions of this Law including those whose effective date may precede the enforcement of this Law shall, unless they are proved more beneficial to the worker, be deemed null and void.<sup>27</sup>

After reviewing the three aspects of register, we now move on to review the differences between the Arabic and English translation of legal discourse in terms of its lexical, syntactic and textual levels.

### **5.3 Differences between English and Arabic Legal Texts**

As a general rule, legal texts have a distinct lexical and syntactic structure and they differ greatly from other varieties of language. This is due to the fact that such texts are supposed to be logical, highly impersonal, instructive, and authoritative. Furthermore, governments’ policies, statutes, regulations, and

<sup>26</sup> complete text can be found in: [www.ajmanded.ae](http://www.ajmanded.ae)

<sup>27</sup> Complete text can be found in: <http://www.deg.gov.ae>

constitutions are usually written in the legal form. That is why the distinct structure of such texts should not accommodate any possibilities for misinterpretation.

The structure of Arabic legal texts does not differ greatly from that of their English counterparts. However, Arab translators may still face difficulties in “translating legal texts from English into Arabic or vice versa as each of these languages has its own syntactic features” (Farghal and Shunnaq, 1999: 158). So the analysis following will be referring to both Arabic and English texts, with examples from both. The first part of the analysis concerns the lexical level; the second part discusses the syntactic level, while the third will deal with the textual level.

### **5.3.1 Lexical Differences**

One of the sources of difficulty is lexical complexity. Legal vocabulary exhibits distinctive features particular to expressing the concepts of law. Characteristic of the legal register are technical terms, common terms with uncommon meanings, archaic expressions, and formal items (see Danet, 1985: 279-80). It is no wonder then that many studies of legal language have been concerned with syntactic and lexical features.

One of the problems encountered in translation in general, and in legal translation especially, is lexical equivalence. This is due to the differences between languages, especially when both languages are from different origins and completely different culturally and grammatically as is the case with Arabic and English.

For instance, the lexical (words, phrases etc.) difference is one of the main challenges that may face a translator between English and Arabic. Consulting a bilingual Arabic-English dictionary<sup>28</sup> in order to translate the Arabic lexical

---

<sup>28</sup> See *Al-Mawrid: A Modern English-Arabic Dictionary*, 2010, *The Concise Oxford English-Arabic Dictionary of Current Usage*, 1983, *Elias' Modern Dictionary*, (*Arabic-English Dictionary*, 1999).

item “ادعى” (iddaʿa), for instance, could be confusing for the legal translator as it has various meanings in English and it is a challenge to select the appropriate meaning. In most Arabic-English legal dictionaries, the Arabic lexical item would be given as “allege, claim, affirm, contend, assert, or profess, etc.” (Faruqi’s Law Dictionary, 2006).

Once again, the previous examples show that the SL lexical item has more than one TL correspondent in the Arabic-English legal dictionary. The translator has to be careful when selecting the right lexical item as they could be completely unrelated to each other. Thus, the translator between Arabic and English should be aware of “the lengthy lists of equivalents for one SL lexical item by being able to rely on context for deciding the relevant equivalent” (Farghal and Shunnaq, 1999: 34).

In relation to lexical equivalence, Larson points out that the translator will often find that there is no exact equivalent between the words of one language and the words of another. He adds that “there will be words which have some of the meaning components combined in them matching a word which has these components with some additional ones. There will be overlap, but there is seldom a complete match between languages” (1998: 61). Larson suggests that it is often necessary to translate one word of the SL by several words in the TL in order to give the same meaning (ibid).

According to Holmes, “A word generally has several meanings, even in the dictionary. You have to consider the sentence in which it stands to decide which of those meanings it bears in a particular case, and very likely will see that it there has a shade of significance more refined than any given in the word-book” (1899: 417-420).

In comparison with English, Arabic is a highly inflected language. Although it often makes use of function words as English does (Varó and Hughes,

2002:165), Standard Arabic denotes most syntactic relationships through inflectional affixes, or even a change of the vowel affix. Functional words are the “terms used to interrelate the major linguistic elements, or blocks of meaningful words in a text” (ibid). Thus, except for a few uninflected words, mainly particles, almost all verbs, nouns, adjectives and even many adverbs are inflected (Kharma and Hajjaj, 1997: 45). From the word “حَكَمَ” (ḥakama-to sentence), many different lexical items can be derived such as; “حَكَمٌ” (ḥakamun-arbitrator), “حُكْمٌ” (ḥukm-sentence), “حَكَّمَ” (ḥakkama-to impose), “حِكْمَةٌ” (ḥikma-wisdom), “حُكُومَةٌ” (ḥukūmah-government), “مَحْكَمَةٌ” (maḥkamah-court), “مَحْكُومٌ” (maḥkūm-convicted) etc.

### 5.3.1.1 Archaic Words

#### i) Adverbial Archaic

Archaic words are one of the main features of legal English.<sup>29</sup> Tiersma states that “legal language often strives toward great formality; it naturally gravitates towards archaic language”. English legal language is well known for using archaic terms. The most commonly used terms are, for example: hereto, hereinafter, hereof, herein, hereafter, etc (1999: 95). According to David and Davy, the reason that legal language still uses such archaic words and expression is a matter of tradition and formality. David and Davy give examples such as “witnesseth” which is used to refer to a third person (1969: 207). The following example is the translation of the Emirati Federal Law No. 8 of 1984. The archaic words are underlined:

---

<sup>29</sup>Chapter Four (section: 4.6.1) discusses the lexical features of both legal English and Arabic.

## Text 9 Emirati Federal Law No. 8 of 1984

### FEDERAL LAW NO. 8 OF 1984

#### COMMERCIAL COMPANIES

We Zayed Bin Sultan Al Nahyan, President of the United Arab Emirates, with cognizance to the Provisional Constitution, Law No.1 of 1972 concerning Capacities of Ministers and Authorities of Ministries and its amending laws and submission made by the Ministers of Economy and Commerce, approval of both the Cabinet and the Federal National Assembly and ratification by the Supreme Council,

Hereby issue the following law:

## Text 10 Emirati Federal Law No. 8 of 1984

### ARTICLE (1)

Applying this law, each of the following terms shall have the meaning assigned theretohereunder:

State : United Arab Emirates

Ministry: The Ministry of Economy and Commerce.

Minister: The Minister of Economy and Commerce.

Authority: Local concerned authority in the relevant Emirate.

Agent: Natural person holding the State nationality of private artificial person incorporated within the state totally owned by natural nationals.

Such words are also frequently used in Arabic legal texts because they are thought of as adding more precision. There are “المشار اليه” (al-mushār ilayh-the aforesaid), “المذكور أعلاه” (al-madhkūr a‘lāh-the aforementioned), “السالف ذكره” (al-sālif dhikruh-the said). Examples in both Arabic and English texts can be illustrated as follows:

## Text 11 Article 8 of the Omani Labour Law

ويجب على الموظفين المشار اليهم الحرص على سرية مصدر أية معلومات أبلغت لهم بشأن مخالفة أحكام هذا القانون واللوائح والقرارات المنفذة له.<sup>30</sup>

<sup>30</sup>Full text can be found in: [www.manpower.gov.om](http://www.manpower.gov.om)

The said officials shall observe confidentiality regarding the source of any information which has come to their knowledge in connection with the violation of and provisions of this law or its executive regulations and decisions.

These words archaic terms do not seem to cause any translation difficulties. They are usually used in legal texts as precision tools. They refer to something that has already been mentioned in the text, but in this case their usefulness is no more than that of the simple article “the”, especially when the clause contains only one referent of the type referred to after any of these words.

However, Solan’s (1993) point of view is that the word “said” is “now more popular than the “aforesaid” whereas Mellinkoff, mentions that the “lacking the Old English “afore said” is not used as much as “Aforementioned” on the other hand “afore said” seems to have been replaced almost completely by “abovementioned”. There are opponents for the unnecessary use of “said” (1963: 111-112).

#### ii) The use of SHALL

Traditionally, the modal “shall”, in legal texts, carries the notion of an obligation or a duty, as opposed to its common function: expressing futurity (Tiersma, 1999: 105). It is one of the distinctive features of legal English. It is significant not only because of its high frequency of use, but also because of its traditional use in legal English only may not be found in legal dictionaries. Cao states that “shall” in legal English usually means “must”. It can have other meanings such as indicating time or in a declaratory sense, as in “the agreement shall be void” (1997: 666). For more examples of “shall”, see section 5.3.2.3.2.

#### **5.3.1.2 Binomials and Multinomials**

Another feature of legal texts is the frequent use of binomials and multinomials, which may be explained, as already stated, in terms of the desire to achieve a

high level of precision. Binomials and multinomial expressions are collocations of synonyms or near synonyms (Emery, 1989: 9). According to Gustafsson “binomials occurred more than five times more often in legal language than the other prose styles” (narrative, journalistic, and scientific) (1984: 134). Moreover, Crystal and Davy state that the idea of using such a feature in legal text is “to rely on inclusiveness as compensation for lack of precision” (1969: 208). Collocation, as Bowers defines it, is "the relationship between one word and another in terms of proximity and contiguity; words are regarded in this relationship more as objects in themselves than as expressions of semantic structure and meaning" (1989: 77). Lyson explains the difficulty in interpreting collocations as follows:

I am not, of course, denying the obvious fact that the meaning of a word can often be conveyed to someone who already has a partial knowledge of the language by listing a well-chosen set of collocations in which the word in question is used. We do come to learn the meaning of many words by virtue of hearing them, or seeing them, in various verbal contexts. But our ability to infer their meaning from the contexts in which they are employed, verbal or situational, depends upon our intelligence or ‘sentiment linguistique’, upon our knowledge of the meaning of other words in these contexts and upon our realisation of the paradigmatic oppositions that hold between the word in question and other words which might have occurred, but did not in fact occur, at the same point in the text (1966: 296).

In the same time, binomials are also common in Modern Written Arabic, including legal Arabic. In some cases, an Arabic binomial is congruent with the English one such as: “عاجلاً أم آجلاً” (‘ājilan am ājilan-sooner or later), “المدعي والمدعى عليه” (al-mudda‘ī wal-mudda‘ā ‘alayh-plaintiff and defendant) (Kadi, 1987: 64). Arabic binomials are sometimes translated for word. Emery quotes some of such cases: “نافذاً وملزماً” (nāfiḍan wa mulzimn-effective and obligatory), “الأمن والسلام” (al-amn wa-al-salām-peace and security) (ibid).



The text to follow represents the Omani Labour Law 35/2003 followed by the official translation. It is reproduced here because of its historical value besides its richness in the various features of Arabic legal texts, including the use of several binomials:

## Text 12 Omani Labour Law

مادة 1: يصدر وزير القوى العاملة اللوائح والقرارات اللازمة لتنفيذ أحكام القانون المرافق.

مادة 3: يقع باطلاً كل شرط يخالف أحكام هذا القانون ولو سابقاً على العمل به إلا إذا كان أكثر فائدة للعامل.

كما يقع باطلاً كل إبراء أو مصالحة أو تنازل عن الحقوق الناشئة عن هذا القانون إذا كان مخالفاً لأحكامه. ويستمر العمل بأية شروط أفضل تكون مقررة للعامل بموجب القوانين واللوائح والقرارات المعمول بها في تاريخ العمل بهذا القانون..

مادة 10: يصدر الوزير قراراً بتحديد الإجراءات والضوابط التي يتم التعامل بموجبها .....

مادة 50: يصدر الوزير قراراً بتحديد الحد الأدنى للعلاوة الدورية وإجراءات وشروط صرفها.

مادة 118: ...وبالسجن مدة لا تزيد على شهر أو بإحدى هاتين العقوبتين إذا خالف أحكام الباب السادس من هذا القانون واللوائح والقرارات الصادرة تنفيذاً له، ....

مادة 124: فيما عدا العقوبات المقررة للمخالفات المنصوص عليها في المواد السابقة، يعاقب كل من يخالف أحكام هذا القانون واللوائح والقرارات المنفذة له بغرامة .....

Article 1: the Minister of Manpower shall issue such regulations and decisions as may be necessary for the implementation of the provisions of the attached law.

Article 3: Any condition which is contrary to the provisions of this law shall be null and void even if it was prior to its operation unless the condition is of more benefit to the worker.

Any release or settlement or waiver of rights arising out of this law shall be null and void if it is contrary to its provisions.

Any conditions prescribed by the laws, regulations and decisions which were in force at the date of coming into force of this law which are more advantageous to the worker shall continue to be enforced.

Article 10: the Minister shall issue a decision defining the procedures and regulations according to which the private sector .....

Article 50: the Minister shall issue a decision to determine the minimum periodical allowances and the procedures and conditions for their payment.

Article 118: ...and by being put in prison for a period of not more than one month or shall be subject to one of these two penalties in case of infringing the provisions of the sixth section of this law and the regulations and resolutions issued to execute it.

Article 124: Apart from the penalties set for the infringements stated in the previous articles, every person contravening the provisions of this law and the regulations and resolutions issued to execute it....

Both Binomials and Multinomials as noted in the Arabic texts above are common in Arabic legal texts. In some instances they are similar to the English ones, but they differ in others; for example, we see “إجراءات وشروط” (ijrā’āt wa shurūṭ-procedures and conditions), while “الإجراءات والضوابط” (al-i’jra’āt waḍ-ḍawābiṭ-procedures and regulations) is also translated as “procedures and conditions” in the TT below.

Here we find that binomials and multinomials abound in all Arabic texts, almost without exception, including legal texts. It could be that stylistic techniques in Arabic require more generous use of binomials, for example in literary and religious registers, than in English (Emery, 1989: 9).

Apart from the eight binomials and multinomials, two binomials are added in the English TT above. The translator tries to create an equivalent universality

through the proper positioning of such expressions in the translated text. “Null and void” is thus added to the TT as a binomial, whereas the ST uses the verbal phrase “يقع باطلاً” (yaqa° bāṭilan). Legal Arabic also uses a binomial “لاغي وباطل” (lāghī wa bāṭil) to express the same meaning.

It is clear that binomials and multinomials are a feature of both Arabic and English legal language. They do not seem to cause any translation difficulties in legal text even when translated literally since they are similar in both Arabic and English such “procedures and conditions” and “regulations and resolutions”.

### **5.3.2 Syntactic Differences**

Syntactic differences between Arabic and English legal text will be discussed in terms of punctuation, nominal group, verbal group, etc.

#### **5.3.2.1 Punctuation**

In general, punctuation is not quite common as in English. For example, Arabic uses the connector “wa-and” while in English, “commas” is used instead. These differences also affected punctuation in both Arabic and English legal text. According to Crystal and Davy, sentences in legal language “tend to be extremely long” and “only a limited range of punctuation marks is allowable in legal English and the occurrences are few by normal standards” (1974: 201). Furthermore, legal sentences are presented as a single syntactic structure, often of great length and complexity (Bhatia, 1993: 138). Long and complex sentences are an outstanding characteristic of legal texts, and it is normal to find a whole statement written in one sentence. With regard to this form of structuring, Crystal and Davy maintain that: “Legal sentences are usually self-contained units which convey all the sense that has to be covered at any particular point and do not need to be linked closely either to what follows or what has gone before” (1974: 201). The example below is a selected article of

the **Universal Declaration of Human Rights** which illustrates this type of feature:

### **Text 13 Universal Declaration of Human Rights**

فإن الجمعية العامة تنادي بهذا الإعلان العالمي لحقوق الإنسان على أنه المستوى المشترك الذي ينبغي أن تستهدفه كافة الشعوب والأمم حتى يسعى كل فرد وهيئة في المجتمع، واضعين على الدوام هذا الإعلان نصب أعينهم، إلى توطيد احترام هذه الحقوق والحريات عن طريق التعليم والتربية واتخاذ إجراءات مطردة، قومية وعالمية، لضمان الاعتراف بها ومراعاتها بصورة عالمية فعالة بين الدول الأعضاء ذاتها وشعوب البقاع الخاضعة لسلطانها<sup>31</sup>.

The preamble of the proclamation is manifested in one stretch of a sentence. Punctuation marks are limited to a few commas and one final period and the sentence is interrupted three times. The same long sentence can be found in English as follows:

**THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction<sup>32</sup>.

Another example of “سند كفالة” (sanad kafāla-Bail Bond) can be illustrated below with the English translation by Hatim, Shunnaq and Buckley (1995: 858):

<sup>31</sup> The full Arabic text can be found in <https://www.un.org/ar/documents/udhr/> see note 5.

<sup>32</sup> Preamble of the Universal Declaration, the full text of which can be found in <https://www.un.org/en/documents/udhr/>

#### Text 14 “سند كفالة” (sanad kafāla-Bail Bond)

أنه كفل السيد ----- كفالة مالية مطلقة من أهالي ----- الذي عين موظفاً في حكومة ----- كفالة مالية مطلقة/كفالة مالية لقاء المبلغ بحيث يضمن بلا تعلل وبدون أن تحتاج الحكومة إلى الاستحصال على حكم عليه من المحكمة كل ما يدخله مكفولة المذكور بالغاً ما بلغ في ذمته من الاموال والأشياء والنقود التي تأمنه الحكومة عليها أو تكفله بإدارتها أو بالإشراف عليها أو تجعل له علاقة بها بأي من الصور وفيما اذا ساعد غيره على إدخالها أو أي شيء منها منه وفقاً للقوانين والأنظمة أو المقررات والتعليمات أو البلاغات المتبعة سواء كان هذا الاسترداد أو التضمن يستلزم الجزاء أو لا يستلزمه وثبت ذلك بإقراره أو محاسبته أو بالقيود الرسمية أو بأية صورة أخرى ويكفله كذلك بالمبالغ التي تنفقها الحكومة إذا حدث أن اتخذت بشأنه أية اجراءات إما بقضية أو بتحقيق أعماله أو لأجل الحصول على الأشياء والنقود والأموال التي استودعها أو اذا ساعد على فقدانها بأي أوجه من الوجوه وقبل القيود الرسمية دون تعلل فيما يختص بتعيين مقادير النفقات المذكورة وذلك علاوة على المبالغ الذي يكون مكفوله قد أدخلها في ذمته أو ساعد غيره على ادخالها في ذمة غيره أو ضياعها.

That he stands bail for Mr. ----- a bail of unrestricted sum/certain sum, from the town of ----- who is employed as a civil servant in the government of ---- whereby he guarantees, without excuse and without the government requiring to obtain a ruling concerning him from the court, the totality of all the property, things and money which he comes into possession of and which the government entrusts him with or entrusts him administering or supervising or places him in relation with in any shape or form, and when the person bailed helps others to obtain these in part or in whole, and when the person bailed is required to recover some of these from him in accordance with the laws and regulations or the decisions, the instructions or the decrees in effect, and when this recovery or claim of restitution or liability necessitates a legal penalty or not, and when this is established by his admission or by holding him accountable or by the official stipulations or by any other means. He similarly stands as security for him concerning the sums which the government would expend if it should occur that it must take any measures regarding him, be these in a legal case or official enquiry into his affairs or in order to obtain the things, money and property which he has deposited, or if he assists in the loss of these in any manner whatsoever. And he shall without any excuse accept the official stipulations concerning the determination of the aforementioned expense, and this in addition to the sums which the person for whom he stands bail has put under his responsibility or which some other person has assisted in putting under someone else's responsibility or in cases of loss.

The Arabic “Bail Bond” consists of one long and complex sentence of about 179 words. This is because of the distinctive nature of legal texts. The text above, as can be seen, does not use any punctuation marks since they are “essentially redundant in Arabic” and the drafter only used connectors such as: “أو or” and “و-and”. The Arabic coordinator “و-wa” is the equivalent of the

English “and” which can join two clauses together. The Arabic coordinator “أو” (aw) mainly expresses disjunction, where one alternative is to be chosen. The various alternatives might be exclusive. In the former only one alternative can be realized; in the latter, both can be realized (Aziz, 1993:129-133). However, the English connector “and” has other functions and differs from the Arabic “و” (wa). It can express several semantic relations. Apart from connecting two clauses together, it may also express result or sequence as well as expressing comment on the preceding clause. It can also express concession and condition. On the other hand, “or” can express one exclusive choice as the Arabic “أو” (aw), plus it may introduce an explanation or a more precise reformulation of the preceding clause (ibid). In the above example, “أو” (aw) is used 16 times in just one sentence; however “و” (wa) is used 12 times. This shows the importance of such devices in an Arabic legal sentence. Such differences between Arabic and English connectors may cause translation difficulties, and so the translator should be aware of such differences.

The use of punctuation marks in English legal texts is restricted, and among them only commas and final periods used for the most parts. In this respect Crystal and Davy maintain that “only a limited range of punctuation marks is allowed in legal English, and the occurrences are few by normal standards” (1974: 201).

It can be noticed that the number of words of the English TT above is almost twice that of the Arabic ST. Legal language tends to be as precise as possible and the translator seems not to have achieved the precision of the ST. The translator did, however, use some punctuation marks such as commas and separated the long sentence into three long sentences using commas in the TT. Moreover, the translator used pronouns and anaphoric links such as “he, him, his”. As mentioned earlier, pronouns and anaphoric links are usually avoided in legal sentences. Instead, these sentences are characteristically linked by

repeating the same lexical item which is “the only formal linkage to be found between the long and self-sufficient sentences” (ibid: 202).

The rare and sketchy use of punctuation marks in English legal text contributes greatly to the long and complex structure of legal sentences because punctuation is a useful guide to grammatical structure as well as to the interpretation of the meaning. Punctuation marks are limited to a few commas and one final period, the main verb is delayed to come after three phrases (adverbial, prepositional, nominal), and the rest of the sentence is interrupted almost three times.

Also, the English conjunction “and” and the disjunction “or” play an important part in the TT. In the English punctuation system, there is a link between these two connectors and commas. Clauses in English may be linked by explicit coordinators which are called “syndetic” (the conjunction is present), as in the TT above where the translator adopted literal translation to translate “أو” (aw). The second type is called “asyndetic” in which each lexical item is separated by a comma, conjunction or disjunction tool inserted before the last lexical item. The latter is more common in English (Aziz, 1989: 129). Therefore, a TT sentence from the above can be as follows:

by his admission, by holding him accountable, by the official stipulations or by any other means.
---

From the above example, the commas used in this sentence have only one role to play, namely that of conjoining all these items with a view to creating an all-encompassing body of rights and permissions for the person who stands for the bail.

To sum up, Arabic-into-English translations of such texts may lead to challenges to the translator due to the differences between Arabic and English.



### **5.3.2.2 The Nominal Group**

Nominalisation is usually characteristic of authoritative discourse such as legal language in which a verb, an adjective, or an adverb becomes the head of a noun phrase. On one hand it is “a rendering of the content of a verb in the form of a noun” (Fowler, 1985: 71). On the other hand, it is “one of the most striking characteristics of written legal English that it is highly nominal” (Crystal and Davy, 1974: 205). Similarly, Nominalisation is also a feature of legal Arabic, although there are differences in internal structuring between Arabic and English. Butt explains the difference between using nouns and verbs in legal language:

Another linguistic convention is the use of noun phrases instead of verbs – the practice of “nominalisation”. This convention is not peculiar to legal writing; it also infects bureaucratic and official language. But in legal documents it is endemic. For example, parties to legal documents don’t “decide” to do something; instead, they “make a decision”. They don’t “resolve”, but “pass” a resolution. This practice of nominalisation might be thought to achieve a certain formality of tone, but it is at the expense of effective communication. Verbs, especially strong verbs, communicate more effectively. They help make writing more direct (2006: 153).

Bhatia states the complexity of legal sentences and the use of phrases as well as syntactic features as he states “so far as qualificational insertions are concerned, legal draftsmen do not consider any phrase boundaries sacrosanct, be it a verb phrase..., a noun phrase, binomial phrase or even a complex prepositional phrase” (1994: 148).

In the preambular sections of the International Islamic Court of Justice quoted in Hatim (1997: 18) nominal structure is noticeable:

## Text 15 International Islamic Court of Justice

وانسجاماً مع أحكام ميثاق منظمة المؤتمر الإسلامي،  
ورغبة في إنشاء جهاز قضائي رئيسي يفصل في المنازعات وفقاً لأحكام الشريعة...  
وإذ يعرب عن تقديره للجهود التي بذلها خبراء اللجنة المختصة....

As shown above, the Arabic source text preserves the element of nominalization with the addition of the connector “و” (wa-and) before the nominal verbs in order to complete the meaning. Such as: “وانسجاماً مع أحكام ميثاق منظمة المؤتمر” (wa insijāman ma’a aḥkām mīthāq munadhamat al-mu’tamar -in conformity with the provisions of the Charter), and “فيورغبة” (wa raghbatan fī-desiring to).

The connector “و” (wa-and) which is “indispensable for linking the various paragraphs of the Preamble in the Arabic text must be left out in English” (Hatim, 1997: 18). The following example of Draft Convention on the Law of the Sea quoted in Hatim, (ibid: 20) illustrates the English nominals:

Recognizing the desirability of establishing, through the Convention...  
Bearing in mind that the achievement of such goals will contribute to the ...  
Affirming that matters not regulated by this Convention continue to be ...

Such English nominal sentences may be translated as “وإذ تسلم أنه من” (wa idh annahū min al-mustaḥsan-Recognizing the desirability of), “وإذ تضع في اعتبارها” (wa idh taḍa’ fī i’tibārihā - Bearing in mind) and “وإذ تؤكد” (wa idh tu’akkad-affirming that) (ibid: 21).

### 5.3.2.3 The verbal Group

The verbal groups is used differently in both Arabic and English legal texts. Thus this may lead to additional translation challenges. Such verbal differences can be discussed in the following sections:

#### 5.3.2.3.1 Present

The present in Arabic legal language is formed by the standard verb in the present. However, the normal verb in legal English is formed by “shall + VERB” (see section 5.3.1).<sup>33</sup> So in the text below quoted from the Omani Labour Law, it can be noticed that there is a frequent use of the particle “أن” + VERB in Arabic and the official translation is:

#### Text 16 Omani Labour Law

مادة 78
على صاحب العمل في حالة تشغيله لحدث أو أكثر أن:
1- يضع في محل العمل نسخة من الأحكام الخاصة بتشغيل الأحداث المنصوص عليها في هذا الفصل والتي يصدر بها قرار من الوزير.
2- يحرر أولاً بأول كشفاً مبيناً به أسماء الأحداث وسنهم وتاريخ تشغيلهم.
3- يضع في مكان العمل وبشكل ظاهر كشفاً مبيناً به ساعات العمل وفترات الراحة ومواعيد الراحة الأسبوعية.
4- يبلغ مقدماً الدائرة المختصة بأسماء الأحداث قبل تشغيلهم والأشخاص الذي يستخدمهم لمراقبة لمراقبة عمله.

#### Article 78

If the employer employs one or more juveniles he:

- 1- Shall keep in the workplace a copy of the rules related to the employment of juveniles provided in this Chapter, and such rules as may be issued by a decision of the Minister.
- 2- Shall prepare a list stating the juveniles' names, their ages and dates of their employment immediately after their employment.
- 3- Shall display conspicuously in the place of work, a schedule specifying the working hours, the rest intervals and the weekly rest times.
- 4- Shall notify the relevant directorate in advance with the juveniles' names before employing them, and the persons who are employed to supervise their work.

<sup>33</sup>For further details, see Dickins, Hervey and Higgins (2002: 202).

### 5.3.2.3.2 Modality

Modality in general is used quite often and presented by a few modals such as “shall, will, can, could etc.” however, this feature is not common in Arabic. Arabic uses verbs instead. According to Hatim, the verbal element “الفعل” (alfiʿl) is “the most important element in the structure of the sentence” (1997: 25). Such verbs show that “something is mandatory, allowing exemption, forcing by invoking the law, strongly recommending by invoking reason, logic, etc” (ibid.).

Furthermore, the difference in verbal systems between Arabic and English can “confront the translator with all kinds of problems” (ibid). The verbal groups in Arabic legal texts are notable for the use of the imperfect form of “كان” (kāna) or the equivalent of modality such as: “يجب” (yajib), “يحظر” (yaḥḍur), “يجوز” (yajūz). However, English uses a number of finites that are of the type known as “modal auxiliaries”, usually “shall” plus “be” plus the past participle form of the verb, and ‘may’ plus the infinitive. According to Crystal and Davy, “shall” is invariably used to express what is to be the obligatory consequence of a legal decision (1974: 206). The following Arabic text taken from “اتفاقية بشأن الملاحة التجارية البحرية” (ittifāqiyya bisha’n al-milāḥa attijāriyya al-baḥriyya-a convention on mercantile shipping) illustrates the use of verbs in Arabic legal text (Hatim, 1997: 44-45):

#### Text 17 a convention on mercantile shipping

مادة 2: يعمل الطرفان المتعاقدان على مساعدة كل منهما الآخر في تنمية الملاحة التجارية البحرية.....  
مادة 3: لا يحق لأي من الطرفين المتعاقدين القيام بأعمال التجارة الساحلية والإنقاذ والإغاثة وغيرها....  
مادة 4: لا تعتبر تجارة ساحلية تلك الحالات التي تبحر فيها سفن أحد الطرفين من ميناء إلى ميناء.....  
مادة 5: يجوز لأفراد طاقم سفينة أي من الطرفين الذين يحملون مستندات تحديد هوية صالحة للعبور.....  
مادة 6: يجب قيد أي تغيير في طاقم بحارة سفينة أي من الطرفين الراسية في ميناء دولة الطرف.....  
مادة 7: يخضع هذا الاتفاق للتصديق عليه وفقاً لتشريعات كلا الطرفين ويصبح ساري المفعول.....

In the Arabic text above, modality is expressed by different lexical items as shown above such as “لا يحق” (la yaḥiqq), “لا تعتبر” (la tuʿtabar), “يجوز” (yajūz),

“يجب” (yajib) etc. According to Hatim “the meaning of the term “يحق” (yaḥiqq) varies with the context and is thus particularly difficult to render into English” (ibid). In Article 3 above (مادة 3) “must be understood as equivalent to “may not” (ibid), the same in meaning as “لا يجوز” (la yajūz). The Arabic modals “يجب” (yajib) and “على” (‘ālā) can be expressed in English by the modal “must”, while “يجوز” (yajūz) can be expressed by the modal “may”. The modal “may” is also the equivalent of “من الجائز” (min al-jā’iz), “قد” (qād), “يمكن” (yumkin), and “بالإمكان” (bil ’imkān).

The table below illustrates with examples different types of modality in legal Arabic along with their English meaning:

#### Text 18 Modality in Legal Arabic

Arabic Modal	Example	English Equivalent
يجب (على) (has duty to)	يجب على مراقب الحسابات أن يخطر الجمعية العمومية كتابة.... The Auditor <u>shall</u> notify the General Meeting in Writing...	Shall
على	على المستأجر التقيد بقواعد الحريق Tenant <u>shall</u> adhere to fire regulations	
يلتزم	يلتزم المقاول بشروط البناء التي تحددها الأجهزة الحكومية The contractor <u>shall</u> comply with the building requirements	



(permitted to)	يجوز للمقاول أن يطلب شهادة تسلم ، ... Contractor may request a certificate....	
لا يجوز (not permitted to)	لا يجوز تبديل أو تعديل أو تغيير هذا الاتفاق مالم يتم الاتفاق على غير .... This agreement may not be altered, changed, or modified unless otherwise agreed....	May not
يحق يستحق	يحق للعامل الحصول على اجازة... Employee <u>shall be entitled to</u> a leave..	Shall be entitled to (Shall have the right to)
مفوض مخول (authority)	يخول الشريك المدير صلاحية التوقيع باسم الشركة. The managing partner is authorised (has the power) to sign for the company.	Is authorised, has the power to

(Sabra, 2005: 94-106)

As illustrated above, Arabic modals cover categories such as obligation, duty, authority, permission etc. On the other hand, other Arabic verbs such as “ينبغي” (yanbaghī) and “يتعين” (yata‘ayyan) can be the equivalents of “must”. They are commonly used in legal texts, and thus have been found in a very small number of the Arabic legal texts consulted, including statutes.

Another verb used quite often in Arabic legal language is the verb “تسري” (tasrī), as in “تسري أحكام القانون” (tasrī aḥkām al-qanūn). In the Omani Labour Law “تسري” (tasrī) is translated into “shall apply”; (“The provisions of this law shall not apply to...”). Thus, a translation decision had to be made as to whether

this verb simply means “applies” as a normal usage common in any ordinary text, or “shall apply” which has legal effect when used with “shall”. Analysis would reveal that the paragraph does not refer to a simple fact, but rather to either an obligation for the contracting party to apply such laws and regulations or an allowance for it to do so. In both cases the use of “shall” is more justified, a decision that is supported by perusing similar stipulations in original English texts. In many other cases the modal "shall" is the translation of the Arabic preposition “على” (‘alā), “يكون” (yakūn) or “يلتزم” (yaltazīm) or one of their derivatives. Such verbs are well established in Arabic legal writing as implying an obligation; the following examples are taken from the Omani Labour Law and are followed by the official translation:

#### **Text 19 Omani Labour Law**

على صاحب العمل أو من يمثله أن يقدم للموظفين المنصوص عليهم في المادة السابقة التسهيلات اللازمة
would become: ‘the employer or his representative, shall in the context of implementation of the provisions of this law and the executive regulations and decisions thereof, provide the officials mentioned in the above section,.. <sup>34</sup>

#### **Text 20 Omani Labour Law**

يكون للأجور والحقوق والفوائد الأخرى وجميع المبالغ المستحقة للعامل أو لمن يستحقون عنه بمقتضى أحكام هذا القانون الأولوية على سائر الديون الواجبة على صاحب العمل وذلك فيما عدا النفقة الشرعية المحكوم بها.
The wages, rights, other benefits and all amounts payable to the worker or to his beneficiaries according to the provisions of this law shall have priority over all debts owed by the employer except the amount of alimony adjudicated by Sharia Courts. <sup>35</sup>

<sup>34</sup> Omani Labour Law, Article 9.

<sup>35</sup> Omani Labour Law, Article 54



## Text 21 Omani Labour Law

يلتزم صاحب العمل بتشغيل القوى العاملة الوطنية التي كانت تعمل بذات المشروع الذي آل إليه كلياً أو جزئياً،

The employer shall employ the same Omani labour that was working in the project reverted to his ownership partially or fully.<sup>36</sup>

The difficulty for Arabic-English translators arises from whether the intention is “obligatory” or “giving permission or authority” since such Arabic lexical items can be used on different occasions and may cause confusion to the translator of Arabic legal texts. Therefore, the translator must be aware of such differences in modality between Arabic and English in order to avoid legal responsibilities in rendering such sensitive texts.

The following Articles from the Vienna Convention, quoted in Hatim (1997: 26), illustrate the use of modality in English<sup>37</sup> legal texts:

## Text 22 Vienna Convention on Diplomatic Relations

Article 3: Nothing in this Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4: The sending state must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

Article 5: the sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff.....

Article 6: Members of the diplomatic missions should in principle be of the nationality of the sending State.

It can be noticed from Text 10 above that the lexical items "shall, must, may, and should" are used to express different levels of obligations in legal English.

<sup>36</sup>Omani Labour Law, Article 48.

This type of modality is categorised according to Coates as “deontic” or “root” and it is more difficult than ordinary modals that are used in normal language because they refer to the logic of obligation and permission (1983: 20-21). “Shall” is one of the “deontic” modals which is regarded as one of the distinguishing features of English legal language. The lexical item “shall”, according to Christopher Williams, “has been by far the most commonly used modal auxiliary for at least 600 years in prescriptive legal English” (2009: 199). It is used in legislation and contracts in legal formations to signify something "imperative" or "mandatory". In the ordinary use of the word, "shall" always expresses a form of command and always carries the meaning of desirable or appropriate to do. Its normal use can mean “must” but this does not merely signify guidance or directions. The importance of ‘shall’ rests on the fact that it completely eliminates the idea of freedom of behaviour or discretion (Sabra, 2005: 94). The auxiliary “shall” in legal English “is not used to express future time but to express obligation” (Crystal and Davy, 1969: 99). The translation difficulty arises from misinterpreting the legal meaning of such a modal auxiliary. The following table shows the use of English legal modal auxiliaries with their possible Arabic equivalents:

### Text 23 English Modality

Modal Auxiliary	Example	Arabic Equivalent
Shall (Command)	This act <u>shall be published</u> in the official gazette.	ينشر هذا القانون في الجريدة الرسمية.
(Abide by)	The parties to arbitration <u>shall abide by</u> the	تلتزم الاطراف بقرار

	Tribunal Award.	هيئة المحكمة.
Shall (must)	Contractor <u>shall</u> comply with instructions.	يجب على المقاول التقيد بالتعليمات.
Shall not (prohibition)	Employee <u>shall not</u> work for a third party.	يُمْتَنَعُ العاملُ العملَ للغير.
Must (no obligation)	Notice <u>must</u> be sent within 30 days.	يجب إرسال الإخطار في غضون 30 يوماً.
(condition precedent)	To be eligible for voting in elections, a person <u>must</u> have the Egyptian nationality.	يشترط فيمن يصوت في الانتخابات أن يكون متمتعاً للجنسية المصرية.
May (is permitted to)	A party <u>may</u> request the arbitral tribunal to make an additional award...	يجوز لأي من الطرفين أن يطلب من هيئة التحكيم إصدار قرار تحكيم إضافي....

The table above illustrates the legal use of English modalities with their possible translations in Arabic. As mentioned earlier in section (5.3.1.1), “shall” seems to cause more confusion than the other modal auxiliaries. Sabra (2005: 107)

quotes an example from the United States Constitution to express the ambiguous meaning of “shall” in English legal language:

#### **Text 24 USA Constitution**

- 1- All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
- 2- The Congress shall assemble at least once in every year, [and such meeting shall be on the first Monday in December,] unless they shall by Law appoint a different Day.

The modal “shall”, in example 1, is used twice: to grant the legislative power to Congress only and to state how congress is formed. The first Article in the American constitution stipulates that Congress consists of two assemblies, the Senate and the House of Representatives. Here “shall” cannot signify a duty or obligation on the legal subject in the sentence (note that in the first clause there is basically no legal subject).

In example 2, “shall” is used three times; before the verb “assemble”, before the verb “to be” and before the verb “appoint”. On all three occasions the use of “shall” is unnecessary as it does not signify any obligation (ibid: 108).

Therefore, as “shall” is used in various different senses, some drafters in different English-speaking countries believe that “shall” is not appropriate for legal writing. Christopher Williams, for example, investigates the use of modal auxiliaries and found that “South Africa’s Interim Constitution of 1994 contains 1288 cases of “shall”, 0 cases of “must”, and 265 cases of “may”, whereas the definitive text of the Constitution drafted less than three years later contains 0 cases of “shall”, 414 cases of “must”, and 274 cases of “may” (Salkie, Busuttil, & Van Der Auwera, 2009: 200).

Once again, the word “shall” was furthermore not used in the Vienna Treaty on Selling Goods as much as it usually is in the English legal system, which is regarded as a tradition. In the 1985 Vienna Treaty on Selling Goods, which consists of 101 Articles, “shall” is used only 5 times and only in one Article, namely Article 76. The rest of the Articles either appear in the present tense or are preceded by “must” (Sabra, 1995: 112). Christopher Williams concludes that even if the English-speaking countries decide to minimise the use of "shall" in legislative texts, it is unlikely to happen in the near future in the UK, the "mother" of legal English (Salkie, Busuttil, and Van Der Auwera, 2009: 208).

#### **5.3.2.3.3 The Passive**

Another important feature in both legal Arabic and English is the passive form (Emery, 1989). It is notable that the passive is more dominant than the active verb form in legal texts, and this is due to the nature of the syntax of such texts. Butt explains the use of the passive in legal language as follows:

“Traditional legal drafters slip easily into the passive, instinctively more at home with the indirect, formal style it exudes. Yet all writing texts - including legal writing texts – say that the active voice communicates more effectively. The active is more direct and driving home the message. The passive is less direct and muddying the message” (2006: 153).

As far as legal Arabic is concerned, then, it can be said that non-agentive passive forms are prominent in such texts. By analysing the Omani Labour Law, it can be noticed that a non-agentive passive is used in almost every Article, as in:

## Text 25 Omani Labour Law

مادة 1: يعمل بأحكام قانون العمل المرافق.  
مادة 2: يصدر وزير القوى العاملة اللوائح والقرارات اللازمة لتنفيذ أحكام القانون المرافق.  
مادة 3: يلغى قانون العمل الصادر بالمرسوم السلطاني رقم 73/34 المشار اليه، وكل ما يخالف القانون المرافق أو يتعارض مع أحكامه.  
مادة 4: ينشر هذا المرسوم في الجريدة الرسمية، ويعمل به بعد انقضاء شهر من تاريخ نشره.<sup>38</sup>

The passive in Arabic, referred to as “مجهول” (majhūl), is formed differently from English, “by merely changing the vowelling of the active, and is standard for all verbs. It is characterised by “ضمة” (ḍamma) on the first syllable, so that in unvowelled Arabic, when it is desired to draw the reader’s attention to the fact that a verb is passive, the placing of “ضمة” (ḍamma) over the first syllable is usually considered sufficient to indicate this” according to Haywood and Nahmad, as in “يعمل” (yu‘mal) and “ينشر” (yunshar) in the text above. It can also be formed in Arabic by the use of the “تم” + verbal noun as in “يتم العمل بهذا القانون” (yatimm al-‘amal bihādḥā al-qānūn min tārikh sudūrih-this law shall come into force after the date of its publication). From a stylistic point of view, the passive form type of “يعمل” (yu‘mal) is usually used in Arabic legal texts because it suits the logical, impersonal and official nature of these texts. However, the other passive construct “تم” (tamma) is also used in legal Arabic, and in addition to its syntactic function, it also has a stylistic one: it avoids ambiguities resulting from difficulties of the readability of the “ضمة” (ḍamma) form. In addition, it may contribute to the aesthetics of the style (1965: 142). The TT below, taken from the Omani Labour Law, shows how the translator dealt with rendering the passive into English. The official translation of the Arabic text above as follows:

<sup>38</sup> For more examples of passive in Arabic and English, see section 6.3.1

## Text 26 Omani Labour Law

Article 1: the provisions of the attached Law shall be enforced,

Article 2: the Minister of Manpower shall issue such regulations and decisions as may be necessary for the implementation of the provisions of the attached law.

Article 3: the Labour law issued by the Royal decree no. 34/73 above referred to shall be repealed, as well as all that is contrary to or contradicting the provisions of the attached law.

Article 4: this Royal Decree shall be published in the Official Gazette and shall come into force after the expiry of one month from the date of its publication.

As can be seen, most of the passives in the English here are composed of “shall be + participle”. As mentioned earlier, “shall” is used to indicate that something under discussion is imperative and mandatory.

### 5.3.3. Textual Features

Textual features in both Arabic and English consist of different subjects such as; the layout of the text, cohesion, lexical repetition, and pronoun reference. These areas play a big role in formulating the legal text. The next part discusses with examples such features:

#### 5.3.3.1. Layout Differences

The layout of most legal documents such as contracts , agreements and treaties is usually four main parts; i) “ديباجة” (dībāja-Preamble), ii) “فاتحة” (fātiḥa-initial/Article, iii) “مواد” (mūad-Articles), and iv) “خاتمة” (khatima-Concluding Article (Hatim (1997: 14). The following “ديباجة” (dībāja-Preamble is taken from The Treaty of Taif between Saudi Arabia and Yemen in 1934:<sup>39</sup> The official translation follows:

---

<sup>39</sup> In 1934, the new Kingdom of Saudi Arabia and its southern neighbour, Yemen, signed a treaty which brought an end to a violent war. The Taif Treaty essentially established a common border between the two nations.

## Text 27 Taif Treaty

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله وحده والصلاة والسلام على من لا نبي بعده.. نحن الإمام يحيى بن محمد حميد الدين ملك المملكة اليمنية- بما أنه قد عقدت بيننا وبين حضرة صاحب الجلالة الملك الإمام عبدالعزيز بن عبد الرحمن الفيصل آل سعود ملك المملكة العربية السعودية معاهدة صداقة إسلامية وأخوة عربية لإنهاء حالة الحرب الواقعة لسوء الحظ بيننا وبين جلالته لتأسيس علاقات الصداقة الإسلامية بين بلدينا ووقعها مندوب مفوض من قبلنا ومندوب من قبل جلالته وكلاهما حائزان للصلاحيات التامة المتقابلة وذلك في مدينة (جدة) في اليوم السادس من شهر صفر سنة ثلاث وخمسين بعد الثلاثمائة والألف وهي مدرجة مع عهد التحكيم الكتب الملحقة بما فيها ما يلي:

معاهدة صداقة إسلامية وأخوة عربية بين المملكة اليمنية- وبين المملكة العربية السعودية حضرة صاحب الجلالة الإمام يحيى بن محمد حميد الدين- ملك اليمن من جهة . وحضرة صاحب الجلالة الإمام عبد العزيز بن عبد الرحمن الفيصل آل سعود- ملك المملكة العربية السعودية من جهة أخرى.

ورغبة منهما في إنهاء حالة الحرب التي كانت قائمة لسوء الحظ فيها بينهما وبين حكومتيهما وشعبيهما ورغبة في جمع كلمة الأمة الإسلامية العربية ورفع شأنها وحفظ كرامتها واستقلالها. ونظرا لضرورة تأسيس علاقات عهديه ثابتة بينهما وبين حكومتيهما وبلديهما على أساس المنافع المشتركة والمصالح المتبادلة . وحبا في تثبيت الحدود بين بلديهما وإنشاء علاقات حسن الجوار وروابط الصداقة الإسلامية فما بينهما. وتقوية دعائم السلم والسكينة بين بلديهما وشعبيهما.

ورغبة في أن يكونا عضداً واحداً أمام الملتمات المفاجئة وبنينا متراصاً للمحافظة على سلامة الجزيرة العربية، قررا عقد معاهدة صداقة إسلامية وأخوة عربية فيما بينهما وانتدبا لذلك الغرض مندوبين عنهما وهما:

عن حضرة صاحب الجلالة ملك اليمن حضرة صاحب السيادة السيد علي عبد الله بن أحمد الوزير.

وعن حضرة صاحب الجلالة ملك المملكة العربية السعودية حضرة صاحب السمو الملكي الأمير خالد بن عبد العزيز نجل جلالته ونائب رئيس مجلس الوزراء.

وقد منح الملكين لمندوبيهما الأنفي الذكر الصلاحية التامة والتفويض المطلق.. وبعد أن اطلع المندوبان المذكوران على أوراق التفويض التي بيد كل منهما فوجداها موافقة للأصول قررا باسم ملكيهما الاتفاق على المواد الآتية:



In the Name of God the Merciful, the Compassionate. His Honourable Majesty the Imam Abdul Aziz Abdurrahman-al-Feysal al-Saud, King of the Saudi Arabian Kingdom on the one part, and His Honourable Majesty the Imam Yahya-bin-Muhammad Hamiduddin, King of the Yemen, on the other part.

Being desirous of ending the state of war unfortunately existing between them and their Governments and peoples;

And of uniting the Islamic Arab nation and raising its condition and maintaining its prestige and independence,

And in view of the necessity of establishing firm treaty relations between them and their Governments and countries on a basis of mutual advantage and reciprocal interests;

And wishing to fix the frontiers between their countries and to establish relations of good neighbourship and ties of Islamic friendship between them and to strengthen the foundations of peace and tranquillity between their peoples and countries; And being desirous that there should be a united front against sudden mishaps and a solid structure to preserve the safety of the Arabian peninsula:

Have resolved to conclude a treaty of Islamic friendship and Arab brotherhood between them and for that purpose have nominated the following representatives plenipotentiaries on their behalf.

*[Here follow the names.]*

Their Majesties the two Kings have accorded to their above-mentioned representatives full powers and absolute authority; and their above-mentioned representatives, having perused each other's credentials and found them in proper form, have, in the name of their Kings, agreed upon the following articles:

Other types of legal documents such as contracts are usually divided into two main sections: the preamble and the general provisions. The preamble usually consists of i) subject, ii) location, date, and parties names, and iii) the “witnesseth”, which is the main clause.

The general provisions consist of the main Articles of the contract. They usually start with the definition of terms, especially in the case of commercial contracts. The layout of such documents in Arabic and English are broadly

similar. Nonetheless, headings in English are usually written in larger fonts and often use capital letters; Arabic, however, lacks the feature of capitalisation.

### **5.3.3.2. Cohesion**

The major elements of cohesion are reference, conjunction, substitution, ellipsis, and lexical repetition. Legal English is distinctive with regard to cohesion, and the cohesive devices that are more commonly used in legal discourse are, for example, lexical cohesion and conjunctions; some others, such as reference, are used with caution. That means, they should not be used at the expense of clarity; some others such as ellipsis are only rarely used. The main aim behind such variation in the use of cohesive devices is achieving accuracy and avoiding ambiguity. The following discussion focuses only on lexical cohesion in legal text such as by repetition, pronoun referencing, and conjunctions Halliday and Hasan (1976). According to Thorne (2008: 277), cohesion, is “created through repletion of lexical sets”. In legal language, sentences are self-contained units and do not need to be linked to previous sentences. This is the reason why anaphoric and cataphoric referencing are not common in legal language as they may cause ambiguity (ibid).

### **5.3.2.1 Lexical Cohesion**

The most common lexical cohesion in legal language is pronouns referencing and lexical repetition as discussed below:

#### **5.3.2.1.1 Pronoun Referencing**

Pronouns and anaphoric links are generally avoided because, according to Crystal and Davy, “they are referring back to an item other than that which the writer had in mind, producing ambiguities and confusions which would be...quite intolerable in a legal document” (1974: 202). Instead, nouns are repeated throughout, as in the previous example where noun phrases like “صاحب العمل” (ṣāhib al-ʿamal) and the compound noun phrase “أحكام هذا القانون” (aḥkām

hādhā alqānūn) or “اللوائح والقرارات” (al-lawā’ih wal-qarārāt) are repeated in full. So that references can be all-inclusive, general words focusing on function such as “الخدمة” (al-khidma), “معلومات” (ma‘lūmāt) or “العامل” (al‘āmil) are chosen. This avoids words that are marked by gender.

The following text is taken from the Omani Labour Law, together with the official translation:

### Text 28 Omani Labour Law

مادة 1

15- الخدمة المتواصلة مع صاحب العمل أو خلفه القانوني ولا تؤثر مدة الغياب المصرح بها من صاحب العمل على اعتبار الخدمة مستمرة.

18- أي نزاع بين صاحب العمل والعامل إذا كان يتعلق باستخدام العامل أو بشروط خدمته أو ظروف عمله.

مادة 5- اعتباراً من تاريخ العمل بهذا القانون يتعين على كل صاحب عمل أن يوفر أو يحتفظ على الأقل بالحد الأدنى للمستويات وشروط الاستخدام المبينة في هذا القانون، ولا يجوز إجراء أي تخفيض في مستويات وشروط الخدمة التي استخدم العامل بموجبها قبل سريان هذا القانون إذا بقي في خدمة صاحب العمل بعد نفاذه.

مادة 8- يكون للموظفين الذي يصدر بتحديدهم قرار من وزير العدل بالتنسيق مع الوزير صفة الضبطية القضائية في تنفيذ أحكام هذا القانون واللوائح والقرارات المنفذة له، وتحدد بقرار من الوزير القواعد والإجراءات المنظمة لعملهم، ويكون للموظفين المشار اليهم الدخول إلى أماكن العمل، وفحص الدفاتر والسجلات والأوراق المتعلقة به للتأكد من تطبيق أحكام هذا القانون واللوائح والقرارات المنفذة له.

ويؤدي هؤلاء الموظفون قبل مباشرة العمل يميناً أمام الوزير بأن يؤديوا عملهم بأمانة وإخلاص وألا يفشوا سراً من أسرار العمل أو أية معلومات أو بيانات أطلعوا عليها بحكم عملهم ولو بعد انتهاء خدمتهم.

ويجب على الموظفين المشار اليهم الحرص على سرية مصدر أية معلومات أبلغت لهم بشأن مخالفة أحكام هذا القانون واللوائح والقرارات المنفذة له.

Article 1:

15- The uninterrupted service with the same employer or his legal successor and the periods of absence approved by the employer, shall not affect the continuity of the service.

18- Any dispute between the employer and the worker if it relates to the employment of the worker or the terms of his services or the conditions of his work.

Article 5: As from the date of coming into force of this law, all employers shall provide or at least maintain the minimum standards and conditions of employment set out in this law. The standards and terms of service under which the worker was employed before the coming into force of this law, shall not be reduced, if the worker continues in the service of the employer after it has come into force.

Article 8: The officials who are designated by a decision of the Minister of Justice in coordination with the Minister shall have the authority to carry judicial investigations for the implementation of the provisions of this law and the regulations and decisions for the implementation thereof. The rules and procedures for the regulation of their work shall be specified by a decision to be issued by the Minister. The aforesaid officials shall have the right to enter the places of work and inspect the books, records and papers related thereto to ensure that the provisions of this law and the executive regulations and decisions thereof are implemented. Such officials shall before assuming their work, take an oath before the Minister that they shall discharge their work honestly and sincerely and shall not disclose any work secrets or any information or data they come to know by virtue of their work even after the termination of their services.

The said officials shall observe confidentiality regarding the source of any information which has come to their knowledge in connection with the violation of and provisions of this law or its executive regulations and decisions.

As can be noticed in the Arabic ST above, the nouns are repeated frequently instead of using the singular pronouns in order to avoid any ambiguity which may cause legal misunderstanding. According to Butt, “legal documents drafted in the traditional style tend to avoid personal pronouns, such as “she, they, we”. More formal substituted are used – “the said”, “the aforesaid”, and “the like”

(2006: 207). Halliday and Hassan call this type of substitution a “co-classification cohesive device” (1985: 74). They add that “it is more typical for reference type devices to signify co-referentiality and for substitution and ellipsis to signify the relation of co-classification” (ibid).

Arabic also uses such formal substitutes in legal language; for example, in the text above “المشار اليهم” (almushār ilayhim) is used a few times. The official translation (TT) above also shows the use of such features in legal English and the technique used by the translator to deal with such difficulties.

The English TT above seems to avoid ambiguities by repeating nouns instead of using the singular personal pronouns. Where a pronoun is used, however, it will usually be the third person singular “he” or the third person plural “they”, as in the following example quoted from the Omani Labour Law followed by the official translation.

#### **Text 29 Omani Labour Law**

لكل عماني قادر على العمل وراغب فيه أن يطلب قيد اسمه في الدائرة المختصة مع بيان سنه ومؤهلاته وخبراته ورغباته والعمل الذي يرغب في الالتحاق به وغيرها من البيانات التي تحددها الوزارة، وعلى الدائرة قيد الطلبات بأرقام سلسلة فور ورودها وإعطاء الطالب شهادة قيد وفق النموذج الذي تحدده الوزارة.

In the Arabic ST above one can easily recognise the high frequency of the male pronoun attached to the verb as in “قادر” (qādir-he is able), “راغب” (rāghib-he is desirous), “اسمه” (ismuhū-his name), “سنه” (sinuhū-his age), “خبراته” (khibrātuh-his qualifications) etc. this is because “the traditional legal drafting prefers the male pronoun. Sometimes the interpretative is added that “male includes female”, reflecting a common statutory provision to similar effect” (Butt, 2006: 210).

Any Omani who is fit and desirous to work may apply for registration of his name with the relevant directorate and state details of his age, qualifications, experience, preferences and the work he desires to join in addition to any other information as may be determined by the Ministry.

Butt suggests that there are three ways to avoid such a problem in using pronouns; i) omit the pronoun as in “the worker desires to ....”, ii) use both masculine and female pronoun: “the work he/she desires to ....” or iii) use the plural (2006: 210).

Another type of pronoun used in legal text but avoided by legal draftsmen is the administrative pronoun. Halliday and Hassan call the aforementioned pronouns “pronomials” (Halliday and Hassan, 1985: 74-82). In the Arabic text above (Text 24), the administrative pronoun “هذا” (hādhā-this) is used more than four times, as in “بهذا القانون” (bihādhā āl-qānūn-by this law). However, it is used more than six times in the English text.

#### **5.3.2.1.2 Lexical Repetition**

As mentioned earlier, cohesion is realised by repeating the same lexical item such as pronoun, conjunction, word etc. This section will discuss lexical repetition as a cohesion device in legal texts. Dickins, Hervey and Higgins define lexical repetition as the repetition of the same word or even of a whole phrase in a particular sense (2002: 108-9). Repetition of a single word is termed word repetition or lexical repetition, while that of a whole phrase is termed phrase repetition. Arabic has four types of repetition; pattern, suffix, root, and lexical repetition (ibid: 100). This section focuses on root and lexical repetition. The following example quoted from the Omani Labour Law, Article 60, illustrates this feature. The official translation follows:

## Text 30 Omani Labour Law

مادة: 60

إذا تغيب عاملاً للمناوبة أو العامل الذي يحدده أجره على أساس الساعة أو اليوم أو الأسبوع أو نصف الشهر أو الشهر عن العمل بدون إذن أو عذر مقبول لا يحق له الحصول إلا على أجر الساعات التي عمل فيها فعلاً. ويحسب أجر الساعة للعامل المحدد أجره على أساس الشهر بقسمة الأجر الشامل على المدة التي يمنح عنها الأجر ثم على عدد الساعات الأصلية طبقاً لعقد العمل أو طبقاً للقانون أيهما أقل. ويحسب أجر الساعة للعامل للمناوبة في هذه الحالة على أساس قسمة الأجر الشامل عن دورة العمل بفرض اشتغاله فيها بالكامل على عدد الساعات الأصلية دون الساعات الإضافية. ولا يجوز الخصم من أجر العامل عن أية ساعة أو يوم يتغيب فيه عن العمل بسبب استدعائه للحضور أمام المحكمة أو الادعاء العام كشاهد.<sup>40</sup>

The text above confirms that lexical repetition is quite common in legal language. For instance, the root “عمل” (‘amala-to work) is repeated 10 times, the word “أجر” (ajr-wage) is repeated 9 times, the word “ساعة” (sā’a-hour), the word “شهر” (shahr-month) is repeated 3 times, and the word “أساس” (asās-basis) is repeated 3 times. Another type of lexical repetition is the relationship of such lexical repetition established by using the attached pronoun such as “أجره” (ajruh-his wage) which refers back to the worker, “لا يحق له” (lā yaḥiqq lahū-he shall not be entitled), “يتغيب” (yataghayyab-he is absent). Another type of lexical cohesion is the repetition of the synonymy of lexical item. Such relations between lexical items can be noticed in the above text example, as in: “اشتغال” (ishtighāl-work) and “عمل” (‘amal-work), “الشامل” (shāmil-gross) and “كامل” (kāmil-total).

Lexical repetition is also common in English legal texts. The following translation shows how legal sentences cohere by using lexical repetition:

<sup>40</sup>Article 60 of the Omani Labour Law

**Article 60**

If the shift worker or a worker whose wage is determined on an hourly, daily, weekly, half monthly or monthlybasis, absents himself form work without permission or an acceptable excuse, he shall not be entitled to a wage except for the hours he has actually worked.

The hourlywage of a worker whose wage is determined on a monthlybasis is calculated by dividing the Gross Wage by the period for which the wage is payable and then by the number of the original hours according to the contract of work or according to the law, whichever is less.

The hourlywage of a shift worker in this case, is calculated by dividing the Gross Salary for the workinghours of a full shift on the assumption that he has worked for the full shift, by the number of the actual hours excluding the additional hours.

No deduction shall be made from the wage of a worker for any hour or day on which he was absent from work by reason of his summon to appear as a witness before the court or the Public Prosecution.

The difference between Arabic and English in lexical repetition is the morphological root and pronouns which are usually attached in Arabic. As explained above, lexical repetition meets the requirements of legislative writing in terms of clarity and avoiding ambiguity. The translator seems to be able to endeavour to keep as much as possible; however, the number of words has increased by almost a third. This is probably because of the translation method the translator has adopted: “translation by addition”. The translator should be as precise as possible when dealing with legal texts.

**5.4 Culture Differences**

The translation process involves not only two languages but also a transfer from one culture to another. Translating cultural meaning can be a harder task than translating linguistic differences. Schaffner states that highly “culture-bound texts, i.e. texts with references to a wide range of cultural patterns of the society in question, including of economic, political and legal life, require a lot of background knowledge for a coherent interpretation”. She adds: “Concepts have



meanings only by virtue of being embedded in socio-culturally determined frames which are more or less culture-specific” (1997: 133).

For Snell-Hornby “translation is an imitation of the source text in the target text against the new cultural background, the main determinant of the translation being the specific function”(1988: 34). Accordingly, lexical items of different cultures may have different functions and meanings such as in the case of the Arabic expressions “مهر مؤجل” (mahr mu’ajjal-down payment) and “مهر معجل” (mahr mu’ajal-deferred payment). The translator may use translation by addition in order to explain to the TR what such words mean in the SC.

Trosborg also agrees that different cultures may have different sets of text types because they have evolved different patterns of communication. Causes for such differences have to be sought in different degrees of literacy, poetic traditions, administrative arrangements, legal procedures etc (1997: 39).

Arabic official documents may have culture-specific terms that refer only to Islamic culture. A marriage certificate translated by Hatim, Shunnaq and Buckley (1995:87) illustrates such cultural differences:

### Text 31 Marriage Certificate

عقد زواج				
المحكمة الشرعية في .....				
تاريخ العقد في .....				
المكان الذي جرى فيه العقد.....				
الاسم الكامل	البلد	مكان	العمر	الجنسية
				الصناعة
الاقامة				
الزوج – البالغ – العاقل – الاعزب				
الزوجة – البنت – بكر / ثيب البالغة العاقلة				

مستندات تحقق السن وعدم الموانع		
.....	المعجل	
.....	المؤجل	المهر ونوعه
.....	توابع المهر	
كيفية دفع المهر		
المباشران للعقد		
شروط أحد الزوجين الخاصة		
شروط العقد والوكالة والتعريف		
الكفالة على الشروط		
موافقة الولي أو اذن المحكمة		
صيغة العقد: قال وكيل الزوجة والدها مخاطباً الزوج المذكور نفسه زوجته وأنكحتك موكلتي ابنتي		
..... على مهر معجل قدره ..... وتوابعه المذكورة ومهر مؤجل قدره .....		
فاجاب الزوج المذكور فوراً وأنا قبلت ورضيت بزواجها ونكاحها لنفسي على المهرين المذكورين		
وتوابعهما		
أنا..... مأذون عقد زواج في ..... قد أجريت هذا العقد على الوجه المفصل أعلاه بعد التحقق من		
استكمال الشروط وعدم الموانع.		
توقيع المأذون .....		

## Mariage Contract

The Religious Court of:

1). Date of Contract:

2). Place of Contract:

3).

Full Name:

The male spouse, a bachelor/married man of legal age and of sound mind:

The female spouse, a virgin/non-virgin of legal age and of sound mind:

Town:

Place of Residence:

Age:

Nationality:

Profession:

4).

Document of Age Verification and Eligibility:

5).

Amount and Type of Dowry:

Down-Payment:

Deferred Payment:

Extras:

6). Method of Payment:

7). Contract Initiators:

8). Special Conditions by either Spouse:

9). Witnesses of Contract, Representative and Identification:

10). Condition Fulfilment Idemnity:

11). Approval of Guardian or Permission of Court:

12). Contract Formula: The representative for the female spouse (her father) said, addressing the aforementioned male spouse, “I have given my daughter.... To you<sup>7</sup> in marriage for a dowry the down-payment of which is.... , the extras of which are mentioned above and the deferred payment of which is....”.

The male spouse immediately replied, “I accept your daughter in marriage and confirm the dowry’s down-payment, deferred payment and extras stipulated above”.

I...., the registrar authorised to perform marriages in ...., having ascertained that the conditions have been fully met, and that eligibility is established, have executed this contract in the manner detailed above.

Signature of Authorised Registrar

The example above shows numerous examples of Islamic specific culture terms which may cause difficulties when translated into English. Target culture reader may find it to distinguish between “زواج” (zawāj) and “نكاح” (nikāḥ). The latter carries a more cultural and religious concept than the former; however, they both have a similar meaning which is “marriage” and they may cause a translation problem. In the example above Text 23, the Arabic sentence “زوجتك وأنكحتك موكلتي” (zawajtuka wa ankaḥtuka muakilatī) is translated by Hatim, Shunnaq and Buckley (1995:87) as “I have given my daughter to you in marriage...”. In the TT, there is a translation loss due to the cultural differences between Arabic and English. Both words “زواج” (zawāj) and “نكاح” (nikāḥ) may have the same meaning in English, namely “marriage” (Faruqi’s Law Dictionary); however, in Shari’a law “نكاح” (nikāḥ) is associated with Islamic marriage as the term “نكاح” (nikāḥ) is mentioned in the Qur’an. The translator may translate “نكاح” (nikāḥ) as “Islamic marriage” for instance. It would give a stronger meaning as religious marriage rather than just marriage. Furthermore, the marriage contract above also specifies whether the wife is a virgin “بكر” (bikr) or non-virgin “ثيب” (thayyib). The translator must have knowledge of both cultures in order to convey the meaning to the TC reader. The TC reader may wonder why the marriage certificate contains such details. Trosborg points out that “translation strategies based on constant content, intention and text type assume that the respective target language has the equivalent or parallel text type” (1997: 39). In some cases where there is no equivalent between the two cultures “the concept of equivalence between source and target language

text can be usually applied on to smaller textual units than the whole document. The finished translation is then no longer a text type inherent to the target language, but a product *sui generis*, a type of translation, expressed in a form that is novel to the target language community” (ibid).

Another translation technique that can be adopted by the translator is “exoticism” (Dickins, Hervey and Higgins, 2002: 29). In this technique, the TT uses the ST cultural features with “minimal adaptation”. Thus, words such as “شريعة” (sharīʿa) can be borrowed into the English text as it is.

To sum up, it can be noticed that “many cultures have imported text types through translation, many of which have not become fully integrated into the target culture making it possible for future translations to be cast into pre-existing types” (Trosborg, 1997: 39). So far we have been discussing the main similarities and differences of Arabic and English legal discourse and we have concentrated mainly on the lexical, syntactic and textual structures of this discourse.

The next chapter will analyse the translation of Libyan legal texts that have been translated by professional translators. It will analyse Arabic texts translated into English so as to illustrate lexical, syntactic and textual translation problems that may occur during the translation process. It will then review the results of the analysis and conclude the thesis with some recommendations and suggestions.

## Chapter Six

### 6. Discourse Analysis

#### 6.1 Introduction

This chapter presents a contrastive analysis of various Libyan legal texts translated from Arabic into English, with a particular focus on Libyan commercial law. It addresses the problems that may be encountered in translating such texts from Arabic into English and examines whether the translator has achieved an acceptable TT for the English reader. Moreover, this analysis aims to explore the technique that translators of Libyan legal texts adopt in order to deal with translation difficulties. Such difficulties usually arise when translating legal language from Arabic into English due to the differences between languages, especially when both languages are from different origins and completely different culturally and grammatically, as is the case with Arabic (Semitic language)<sup>41</sup> and English (Germanic language)<sup>42</sup>.

Analysing some samples of translated materials in the field of the law is one way of comparing ST to TT. The 76 out of 214 texts (see appendices) selected are those mentioned earlier in Chapter One (see section 1.5.1) which will be analysed in terms of terminology, syntax and textual features of the specific field of law. Terminology is included in discourse, which encompasses, in addition to terminology, words from non-technical language not having a specific legal meaning, as well as syntactic and textual features.

---

<sup>41</sup> The Semitic languages are a group of related languages that are spoken by more than 470 million people across much of the Middle East, North Africa and the Horn of Africa. They constitute a branch of the Afro-Asiatic language family. See *Modern Arabic: Structures, Functions and Varieties* (Holes, 2004: 10).

<sup>42</sup> The Germanic languages constitute a sub-branch of the Indo-European language family. The common ancestor of all of the languages in this branch is Proto-Germanic, which was spoken in approximately the mid-1st millennium BC in Iron Age Northern Europe (Crystal, 2003).

As already noted, this chapter provides a contrastive analysis of selected Libyan legal texts in translation from Arabic into English. It is intended that this analysis should achieve one main objective of this study, namely pointing out the areas of match and mismatch between the two languages with reference to the concept of terminology in legal texts. It has already been mentioned in Chapter Two of this study that terminology constitutes a hallmark of this type of texts, and it has therefore been felt necessary to explore this issue with reference to the translation between Arabic and English.

Another equally important aim of this analysis, which is also another aim of the study as a whole, is to account for strategies that legal translators in these two languages adopt in order to reach the highest possible level of equivalence in translation. In order to achieve the two above-mentioned objectives in this chapter the researcher will carry out an empirical contrastive analysis of translated Libyan commercial legal texts from Arabic into English in which Arabic and English serve as SL and TL. In other words, each sample of Libyan commercial legal text will appear in Arabic and English at the same time followed by a contrastive account that will focus on how lexical, syntax and textual features are realised in each version.

In addition, the researcher will also propose his own rendition at the end of each analysis, whenever possible, to clarify the potential possible choices to realise the same concept in either language.

One final procedural remark that must be stated here refers to the fact that the selection of the sample of Libyan commercial legal texts (see appendices) for this chapter was made on the basis of the terminological, syntactic and textual concepts exploited in them. To satisfy the procedural requirement the most common prototypes of the legal text analysis in this chapter are commercial legal texts.

This chapter is divided into three main parts, of which each will involve one linguistic level: part one discusses the lexical level, part two deals with the syntactic level, while part three focuses on the textual level:

## **6.2 Lexical Level**

In this part, legal commercial texts are analysed in terms of legal terminology. The lexical difference (that is, in words, phrases etc.) in legal texts between Arabic and English makes the translation process even more difficult for the translator than translating between two similar languages, especially when both have two different legal systems. Consulting a bilingual Arabic-English dictionary<sup>43</sup> in order to translate the Arabic lexical item “ادعى” (idda‘ā), for instance) could be confusing for the legal translator as it has various equivalents in English and it is a challenge to select the appropriate meaning. In most Arabic-English legal dictionaries, the Arabic lexical item would be “allege, claim, affirm, contend, assert, or profess, etc.” (Faruqi’s Law Dictionary, 2006).

This part concerned with analysing lexical features in legal texts from Arabic into English is based on Varóz and Hughes’s model in categorising legal terms into three types: “pure legal terms”, “semi-technical” terms and general terms used in legal texts. “Pure legal” terms are restricted to legal texts, examples being : “power of attorney”, “court”, “proceedings at law”, “trial”, “judge”, “magistrate”, “syndic”, etc. Semi-technical terms are words that can also be used in everyday language but also have additional meanings related to the legal context; such as: “witness”, “settlement”, “declaration”, etc. Non-technical terms can be used in any text and are not related to any specialised language but can also be used in legal texts; such as: “objection”, “evidence”, “notification”...etc (2002: 16).

---

<sup>43</sup> See (Al-Mawrid: A Modern English-Arabic Dictionary, 2010), (The Concise Oxford English-Arabic Dictionary of Current Usage, 1983), Elias' Modern Dictionary, (Arabic-English Dictionary, 1999).



A problem arises when the translator either translates literally or is unable to find the equivalent of a term which should have the same legal meaning in the target legal system.

The following examples are taken from the Libyan commercial law selected specifically for this study.<sup>44</sup>

Let us consider this example:

#### Example 1 Taken from Law No (6) of 2004

قرار اللجنة الشعبية العامة رقم (136) لسنة 1372 و.ر (2004 مسيحي) باصدار اللائحة التنفيذية للقانون رقم (6) لسنة 1372 و.ر بشأن تنظيم أعمال الوكالات التجارية <sup>45</sup>	Decision of <u>General People's Committee</u> No. (136) of 1372 PD. (2004) for Issuing the Executive Regulation for Law No. (6) of 1372 PD. (2004) for organizing Trade Agency Activities. <sup>46</sup>
---	--

#### Example 2 Taken from Law No (6) of 2004

<u>أمين اللجنة الشعبية العامة</u> <u>للاقتصاد والتجارة</u> <sup>47</sup>	<u>The Secretary of General People's Committee for Economy and Commerce</u> <sup>48</sup>
---	---

<sup>44</sup>See Chapter One, section (1.5.1)

<sup>45</sup>For more examples, see Appendices Text1, Text3, Text5, Text6, Text7, Text17 and Text18.

<sup>46</sup>See Appendices Text 1

<sup>47</sup>For more examples, see Appendices Text1, Text3, Text7 and Text20.

<sup>48</sup>See Appendices Text 3

### Example 3 Taken from Law No (6) of 2004

<p>الجمهورية العربية الليبية الشعبية الاشتراكية العظمى<sup>49</sup></p>	<p>Great Socialist People's Libyan Arab Jamahiriya<sup>50</sup></p>
---	---

### Example 4 Taken from Law No (6) of 2004

<p>3. نموذج يحمل توقيع مدير المشروع ، أو ممثله القانوني في <u>الجمهورية العظمى</u>.</p> <p>4. شهادة من الجهات المختصة ذات العلاقة تفيد بإدخال رأس مال المشروع أو جزء منه إلى <u>الجمهورية العظمى</u>.<sup>51</sup></p>	<p>3- Specimen of signature of Project Manager or his representative in the <u>Great Jamahiriya</u>.</p> <p>Certificate from relevant competent bodies, confirming bringing of the project capital or a part thereof into the <u>Great Jamahiriya</u>.<sup>52</sup></p>
--	---

### Example 5 Taken from Law No (6) of 2004

<p><u>مؤتمر الشعب العام</u><sup>53</sup></p>	<p><u>The General People's Congress</u><sup>54</sup></p>
--	--

In Example 1, the lexical items “اللجنة الشعبية العامة” (al-lajna al-sha‘biyya al-‘āmma) is translated literally as “General People’s Committee”. Typically, the average English lawyer understands “Committee” as “a section of a legislature which considers bills passed to it by the main chamber” (Black’s Law Dictionary, 1999). However, in the Libyan legal system, it refers to the Libyan

<sup>49</sup> For more examples, see Appendices Text1, Text4 and Text20.

<sup>50</sup> See Appendices Text 6

<sup>51</sup> For more examples, see Appendices Text4, Text39 and Text51.

<sup>52</sup> See Appendices Text 1

<sup>53</sup> For more examples, see Appendices Text2 and Text7.

<sup>54</sup> See Appendices Text 6

government. Therefore, the translation “General People’s Committee” gives the wrong meaning and may mislead the reader. It conveys nothing to the English reader as it is translated literally. A possible translation might be “the Libyan government”. In Example 2, the literal translation “the Secretary of the Committee” refers in fact to the Libyan Prime Minister; however, the translator has not succeeded in transferring the meaning into English. The only term which can be understood by the TT reader is “Prime Minister”. In Examples 3 and 4, the lexical items “الجمهورية العظمى” (aljamāhīriyya al-ʿuzmā) is also translated literally. “Great Socialist People’s Libyan Arab Jamahiriya” was the official and political name of Libya. The TT here has no meaning for an English lawyer in the target legal system. Moreover, the literal translation “The General People’s Congress” in Example 5 is the literal translation of “مؤتمر الشعب العام” (mu’tamar al-shaʿb al-ʿāmm) which is in fact the Libyan Parliament. The translator should look for the equivalent in the ST and select the appropriate lexical term; otherwise it would have no meaning and cause translation loss. The translator seems to adopt a strategy of word-for-word translation. Varó and Hughes, however, do not believe that word-for-word translation should be adopted in translation between languages (2002: 180).

Additionally, the translator, could also leave the original meaning as it is and add an explanation of the term such as “jamahiriyya” which was deliberately coined to distance Qaddafi’s system from traditional systems of government, and some of them sound equally odd in Arabic to other Arabs, let alone foreigners.

It can be noticed that the TT above may cause vagueness to the English reader since the translator does not provide the English equivalent terms for the TT reader as he/she has rendered the lexical items literally. As a rule, a translator “should normally use the official or generally accepted translation of any

institutional term” (Newmark, 2005: 89), even when the translator believes that s/he can produce a better one.

Whenever possible, the translator should adopt the “culture approximation” strategy to render SL culture-specific expressions into cultural substitutes in the TL, i.e., ones that are more or less culturally equivalent TL expressions. “Descriptive translation” is also a strategy that can be used to paraphrase a SL expression into the TL by describing it conceptually (Farghal and Shunnaq, 1999: 26-27). The translator has adopted the transliteration technique to render terms such as “جماهيرية” (Jamāhirīa) in Example 3 and 4, but such terms can still cause confusion due to the differences between the Libyan and English political and legal systems.

#### Example 6 taken from Article (11) of Law No (5) of 1997

ويترتب على القيد في السجل الاستثماري كافة الآثار القانونية المترتبة على القيد في السجل التجاري بما فيها ثبوت الشخصية الاعتبارية <sup>55</sup>	Registration in the Investment Register shall involve all legal effects of registration in the Commercial Register, including proof of <u>juridical personality</u> . <sup>56</sup>
---	---

#### Example 7 taken from Article (4) of Law No (5) of 1997

مستخرج رسمي حديث من صحيفة القيد بالسجل التجاري في البلد الأصلي للشخص الاعتباري. <sup>57</sup>	Up-to-date official extract from Commercial Register in the country of origin of the <u>legal juridical</u> person. <sup>58</sup>
---	---

It can be seen from the above example that the TT is ambiguous and has no relevance, and this may cause translation problems. In Examples 6 and 7 “الشخص الاعتباري” (al-shakhṣal-i’tibarī) is “a company or corporation considered

<sup>55</sup> For more examples, see Appendices Text4, Text5, Text7, Text9, 27 and Text50.

<sup>56</sup> See Appendices Text 51

<sup>57</sup> For more examples, see Appendices Text4, Text5, Text7, Text9, 27 and Text50.

<sup>58</sup> See Appendices Text 50

as a legal body” (Black’s Law Dictionary, 1999). According to Faruqi’s Law Dictionary, the Arabic term “الشخص الاعتباري” (al-shakhṣ al-i’tibārī) means “legal person” which is common in English legal texts. The translator borrowed the French term “juridical” and used it to mean “legal”, which did not convey the right meaning. The fact that he did not succeed to convey the meaning showing that no fully equivalent terms can be found across languages when the institutions are different.

### Example 8 taken from Article (3) of Law No (5) of 1997

<p>ويجوز تقديم الطلبات عن طريق الملحقين التجاريين بمكاتب الأخوة والمكاتب الشعبية بالخارج أو من يقوم مقامهم وعلى هذه الجهات إحالة الطلبات فور تقديمها إلى الهيئة.</p>	<p>The Applications may be submitted through the Commercial Attaches in the <u>Fraternity and People’s Bureaux</u> abroad or their deputies. Such bodies shall refer the applications immediately on submission thereof to the Board.<sup>59</sup></p>
--	--

It appears that the translator probably thinks that the English translations themselves are not sufficient for the understanding of the different concepts. That is why he provides the literal translation of original terms so that the reader can refer to them if ever he does not understand the translational equivalents. As a matter of fact, in many cases, the English equivalents do not express the Arabic concepts. In Example 8, “مكاتب الأخوة والمكاتب الشعبية” (makātib al-ikhwa wa al-makātib al-sha‘biyya) is also an awkward translation of “Fraternity and People’s Bureaux”. The terms “مكاتب الأخوة والمكاتب الشعبية” (makātib al-ikhwa wa al-makātib al-sha‘biyya) are diplomatic Libyan terms which refer to Libyan embassies and consulates. The English translation has no relevance to the Arabic term. There are many other cases in which the Arabic terms are literally translated, but the translator, for some reason, deemed it necessary to add the original term in the original language. The translator may prefer to keep the

<sup>59</sup>See Appendices Text52

meaning of the original text since such terms were coined by Qaddafi's system as such terms are unknown even to other Arabs. The translator could also explain what the term means as he kept the original.

In most of these cases, the translation of the Arabic term appears to be a literal translation of the terms. This can mislead the English reader and may cause legal consequences. The translator, however, should know the ST effect on the English and whether the term he translates makes sense for the TR. The literal translation sometimes does not seem to give any acceptable meaning. The English translation seems completely meaningless and therefore confusing.

More examples can be analysed as follows:

#### **Example 9 taken from Article (2) of Law No (23) of 2010**

مادة (2)	Article (2)
مدى تطبيق القانون المدني	Application of Civil Law
تطبق على الأنشطة الاقتصادية أحكام القانون المدني، فيما لم يرد بشأنه نص في هذا القانون.	The provisions of <u>the Civil Law</u> shall be applied to <u>the economic activities</u> which are not provided for in <u>this Law</u> , provided that such provisions shall be applied in as much as their correspondence with General Principles in <u>this Law</u> . <sup>61</sup>
على أن تطبق هذه الأحكام لا يكون إلا بقدر إتفاقها مع المبادئ العامة في هذا القانون. <sup>60</sup>	

In Example 9, it seems quite appropriate to translate the Arabic “القانون المدني” (al-qanūn al-madanī) as “the Civil Law”, “الأنشطة الاقتصادية” (al-anshiṭa al-iqtisādiyya) as “the economic activities”, “هذا القانون” (hādhā al-qānūn) as “this law”, and “إلا بقدر إتفاقها” (illā biqadar ittifāqihā) as “their correspondence”. The TT shows literal translation of the definite article “الـ” (al-the) and the singular

<sup>60</sup> For more examples, see Appendices Text26, Text27, Text28, Text29, Text30, Text36, Text39 and Text41.

<sup>61</sup> See Appendices Text 36

proximal demonstrative “هذا” (hadha-this) into English. The English translation of the definite article as well as the demonstrative does not seem to cause any difficulties to the translator.

**Example 10 taken from Article (8) of Law No (23) of 2010**

مادة (8)	<u>Article 8</u>
ممارسة النشاط التجاري لحساب الغير	<u>Practicing Commercial Activity to Others Account</u>
يجوز للولي أو الوصي أو القيم أن يمارس التجارة لحساب القاصرين ومن في حكمهم، وذلك بإذن من المحكمة الابتدائية التي يقع النشاط التجاري في نطاق اختصاصها	The <u>guardian or the custodian or the curator</u> may practice commerce to the minors or alike account under a permission of the court of the First Instance which the commercial activity falls under its jurisdiction. <sup>62</sup>

**Example 11 taken from Article (10) of Law No (6) of 2006**

المادة (10)	<u>Article (10)</u>
يحظر التعاقد مع الاجانب سواء كانوا اشخاصا طبيعيين أو اعتباريين بشأن توريد السلع أو الخدمات ما لم يكن لهم وكلاء تجاريين معتمدين وفقاً لأحكام هذا القانون. ويستثنى من ذلك السلع والخدمات التي يتم تحديدها من قبل اللجنة الشعبية العامة للاقتصاد والتجارة. <sup>63</sup>	It is prohibited to sign contracts with foreigners, whether <u>natural or artificial persons</u> , for supply of commodities or services, unless they have authorised trade agents under the provisions of this law. The commodities and services specified by the <u>General People’s Committee for Economy and Commerce</u> shall be excluded. <sup>64</sup>

In Example 8, the translator also failed to transfer the meaning of “الولي أو الوصي” (al-walī aw al-waṣī aw al-qayym) into English. The Arabic legal terms

<sup>62</sup>See Appendices Text 36

<sup>63</sup>For more examples, see Appendices Text4, Text5, Text9 and Text50.

<sup>64</sup>See Appendices Text5

“الولي أو الوصي” (al-walī aw al-waṣī) in the English legal system means “legal guardian or custodian”; or “an adult person or an authority such as the High Court appointed by law to act on behalf of someone such as a child who cannot act on his or her own behalf” (Black’s Law Dictionary, 1999). Moreover, the translator rendered literally the preposition “بـ” in “وذلك باذن المحكمة الابتدائية” (wa dhālika bi-idhn min al-maḥkama al-ibtida’iyya) into “under a permission of the court of First Instance” which seems quite odd. It would read better if translated as “with the permission of the court”. Therefore, the TT has no clear legal meaning to the readership, especially lawyers.

Example 10, “اشخاصا طبيعيين أو اعتباريين” (ashkhāṣ ṭabī’iyyīn aw i’tibāriyyīn) is translated as “artificial persons”, which does not convey the correct meaning in the TT legal system. In English legal text, the term “legal persons” is usually used according to Faruqi’s Law Dictionary.

#### Example 12 taken from Article (13) of Law No (6) of 2004

المادة العاشرة يلغى قرار اللجنة الشعبية العامة رقم (31) لسنة 1971 ف والقانون رقم (87) لسنة 1975 ف المشار اليهما ، كما يلغى كل حكم يخالف أحكام هذا القانون <sup>65</sup>	Article (10) Decision of the General People’s Committee No. (31) of 1971 and Law No. (87) of 1975 shall be repealed, as well as any provision <u>contravening</u> the provisions of this law. <sup>66</sup>
---	--

#### Example 13 taken from Article (4) of Law No (23) of 2010

على القاضي عند تحديد آثار النشاط الاقتصادي أن يطبق العرف المستقر إلا إذا تبين أن المتعاقدين قصدوا <u>مخالفة</u> <u>أحكام العرف</u> أو كان العرف متعارضاً مع النصوص التشريعية التجارية الأمرة. <sup>67</sup>	<u>On determination</u> of the economic activity <u>effects</u> , the judge should apply the established tradition <u>except if</u> it is appeared that the contracting parties have intended to contradict the tradition <u>provisions</u> or the tradition
--	---

<sup>65</sup>For more examples, see AppendicesText5 and Text9.

<sup>66</sup>See Appendices Text 5

<sup>67</sup>For more examples, see Appendices Text5, Text6, Text10, Text19, 36 and Text50.



	was in conflict with ordered commercial legislative terms <sup>68</sup> .
--	---

The translator, in Example 12, used the term “contrary” for the Arabic word “يخالف” (yukhālif). According to Faruqi’s Law Dictionary, “incompatible” is a better translation. Using the wrong term can change the meaning completely and cause a translation loss.

The translator seems to adopt word-for-word translation without paying attention to the right equivalents. This starts with the preposition “عند” (‘inda) which means “when” in the above text, and with “تحديد آثار” (taḥdīd āthār) translated as “determination of effects”; however, a better translation which would have expressed the idea is “when determining the effects”. Also the Arabic words “إلا إذا تبين” (illā idhā tabayyana) is translated literally as “except if it is appeared that...” and the Arabic legal term “أحكام” (aḥkām) is not translated in the TT. The legal term “الأمرة” (al-āmira) is translated into “ordered” which is not a legal term. The term which is usually used is “mandatory”; “mandatory commercial legislative acts”. Therefore, the whole TT text is meaningless and has no connection to the ST. it can be suggested to translate Example 13 as “When determining the effects of economic activity, the judge should apply the established tradition unless it appears that the contracting parties intended to contradict the traditional provisions or such traditional provisions are in conflict with jus commercial legislative terms” (my translation).

#### Example 14 taken from Article (14) of Law No (138) of 2004

المادة الرابعة عشر	Article (14)
يعمل بهذا القرار من تاريخ صدوره،	This decision shall come into force

<sup>68</sup> See Appendices Text 36

وينشر في مدونة التشريعات	from the date of its issue, and shall be published in the <u>Legislations Code</u> <sup>69</sup>
--------------------------	--

In Example 14, in addition, the preposition “من” in translated literally into “from”. A better translation would be “on the date of its issue”. The translator also did not succeed in translating “مدونة التشريعات” (mudawwanat at-tashrī‘āt). It is translated into “Legislation Code”. According to Faruqi’s Law Dictionary, Civil Code is the correct translation. Civil Code is “the law established by a nation or state for its own jurisdiction” (Merriam-Webster's Dictionary of Law) and it is called “مدونة التشريعات” (mudawwanat at-tashrī‘āt) in the Libyan legal system.

#### Example 15 taken from Article (19) of Law (23) of 2010

مادة (19)	Article (19)
لا يجوز طرد الشريك من الشركة إلا في الحالات التي يبيح فيها القانون ذلك، أو في الحالات المنصوص في العقد، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقته.	Prohibition of Partner Dismissal The partner may not be dismissed from the company unless in <u>cases allowable</u> by the law or in cases provided for in the memorandum or the Articles of Association. The partner obligation also <u>may not</u> be emphasized unless with him consent. <sup>70</sup>

#### Example 16 taken from Article (23) of Law No (23) of 2010

مادة (23)	Article 23
نماذج العقود والأنظمة الأساسية يجوز للأمين المختص أن يصدر قراراً	Forms of Memorandums and Articles of Association

<sup>69</sup>See Appendices Text 5

<sup>70</sup>See Appendices Text 39

بالنماذج الاسترشادية لعقود التأسيس، والأنظمة الأساسية للشركات والتشريكات المنظمة لها <sup>71</sup> .	The concerned secretary may issue a resolution on <u>guided forms</u> of memorandums and articles of associations of companies and partnerships. <sup>72</sup>
--	--

In Example 15, the Arabic legal terms “إلا في الحالات التي يبيح فيها القانون ذلك” (illā fī ḥālāt al-latī yubīḥ fihā al-qanūn) are translated literally as “unless in cases allowable by the law”, which sounds quite odd. The Arabic terms could be possibly translated as “except in cases allowed by law”. The translator, in addition, rendered “لا يجوز تشديد التزام الشريك إلا بموافقته” (lā yajūz tashdīd iltizām ash-sharīk illā bi-mūwafaqatih) as “may not be emphasized unless with him consent” which does not convey the exact meaning. It could be possibly translated as “may not be increased without his consent”. In Example 16, the Arabic words “النماذج الاسترشادية” (al-namādhij al-istirshādiyya) are translated as “guided forms”; however, the Arabic lexical item means “standard forms”.

#### Example 17 Taken from Article (1165) of Law No (23) of 2010

مادة (1165)	Article 1165
الهيئات والاجراءات التحفظية	Bodies and precautionary measures
يجوز أن توكل مهام القاضي المنتدب إلى القاضي الجزئي للجهة التي يقع مقر عمل المفلس الرئيسي في دائرتها، ويكون تعيين هيئة الدائنين اختيارياً ويجوز عدم القيام بوضع الأختام. <sup>73</sup>	The assignments of the delegated <u>judge</u> may be entrusted to the <u>judge</u> of the <u>summary justice</u> of the authority which the main business office of the bankruptcy falls under its area of jurisdiction. The nomination of the creditors’ board shall be optional and the seals may not be put. <sup>74</sup>

<sup>71</sup> Article (23) of Law No. (23) for 2010 Regarding Commercial Activities.

<sup>72</sup> See Appendices Text 39

<sup>73</sup> For more examples, see AppendicesText5, Text6, Text10, Text19, 36 and Text50.

<sup>74</sup> See Appendices Text 50

The Arabic lexical item “قاضي” (qāḍī) could have more than one counterpart in the English legal system, for example “judge”, “magistrate”, “justice”, etc.. Therefore, it may cause a problem to the translator. However, in England and Wales, “judge” is a lead official who presides over a court of law, either alone or as part of a panel of judges; however, a “Magistrate”<sup>75</sup> in common law systems has limited law enforcement and administration authority. In Example 17 above, the ST shows two types of judges; “القاضي المنتدب” (qāḍī muntadab) and “القاضي الجزئي” (al-qāḍī al-juz’ī). The translator seems to have translated literally “القاضي الجزئي” (al-qāḍī jūz’ī) into “the judge of the summary justice” which could cause legal confusion to the lawyer because in the English legal system “summary justice” is a judge of “a court to use summary proceedings and arrive at a judgement” (Oxford Dictionary of English).

Here, it can be mentioned that a possible alternative translation suggested is “The assignments of the delegated judge may be entrusted to another judge tasked with the summary justice of the main business office of the bankruptcy which falls under its area of jurisdiction. The nomination of the creditors’ board shall be optional and the seals may not be used by this creditors’ board” (my translation).

Furthermore, another type of “قاضي” (qāḍī) is “magistrate” who usually deals with minor offences and holds preliminary hearings for more serious ones. This type of judge does not exist in the Libyan legal system.

---

<sup>75</sup>There are two types of Magistrate in England and Wales: Lay Magistrates and legal professionals permanently employed by the Ministry of Justice. The first group, known as lay Justices of the Peace, sit voluntarily.

### Example 18 taken from Article (1168) of Law No (23) of 2010

<p>مادة (1168)</p> <p>الصلح</p> <p>يعد اقتراح الصلح مقبولاً إذا وافقت عليه أغلبية الدائنين الذين لهم حق الاختيار عدداً وقيمة.</p> <p>ويحكم القاضي بالصلح بعد التنبیت من توافر الأغلبية المبينة في الفقرة السابقة متى وجده مناسباً ويأمر بتنفيذه.<sup>76</sup></p>	<p>Article (1168)</p> <p>Reconciliation</p> <p>The reconciliation proposal shall be considered acceptable if agreed upon by the majority of creditors who have the right of section in number and value.</p> <p>The <u>judge</u> shall issue the reconciliation judgment after confirming presence of the majority shown in the previous paragraph whenever he deems it appropriate and shall issue on an order for its implementation.<sup>77</sup></p>
---	--

By searching for “قاضي صلح” (qāḍī ṣulḥ) in Faruqi’s Law Dictionary, we find that this expression means “magistrate” or “justice of the peace” in the English legal system. The translator in Example 18 above seems to have not achieved the TL near-equivalence. The word “magistrate” would be a better translation since the “reconciliation judge” does not really exist in the English legal system. The translator in my opinion has not succeeded in transferring the exact meaning by adopting the literal translation technique, which may cause translation loss and confusion for the English reader. The translator also seems to have not successfully transferred the correct article and preposition as he just translated them literally. This is the case in Example 18, where “توافر” (tawāfur) is translated as “presence” without “the”, and a preposition is used in translating “ويأمر بتنفيذه” (wa ya’mur bi tanfīdhīh) as in “issue on an order”.

<sup>76</sup>For more examples, see Appendices Text5, Text6, Text10, Text19, 36 and Text50.

<sup>77</sup>See Appendices Text 50

A certain loss of meaning is unavoidable when translating texts with culture-bound terms because no two languages can be so similar as to represent the same social reality. According to Šarčević, “This is particularly true in the case of law: each country has its own legal language representing the social reality of its specific legal order” (1985: 127).

**Example 19 taken from Article (15) of Law No (136) of 2004**

مادة ( 15 )	Article (15)
تختص في التظلمات من قرارات رفض القيد أو الاضافة أو التعديل لجنة تشكل على النحو التالي: - قاضي لا تقل درجته <u>عن مستشار محكمة استئناف</u> ----- <u>رئيس</u> - مدير الادارة العامة للشركات والتسجيلات التجارية – عضواً - رئيس غرفة التجارة والصناعة المقيد بها مقدم الطلب – عضواً - عضو قانوني – عضواً - ولا يصح انعقاد اللجنة الا بحضور رئيسها، وعضوين على الاقل من اعضائها وتصدر اللجنة قراراتها وفي حالة تساوى الاصوات يرجح الجانب الذي منه الرئيس. <sup>78</sup>	The complaints against the decisions for rejection of registration, addition or amendment shall be decided by a Committee to be formed as follows:  <u>A judge</u> whose grade is not less than <u>Counsellor</u> in the Appeal Court. -- <u>Chairman</u> <sup>79</sup>  Director of Companies & Commercial Registration Department – Member  Chairman of Chamber of Commerce and Industry where the applicants is registered – Member.  A legal member – Member.  The meeting of the committee shall be only valid in presence of its Chairman and two members thereof at least. The Committee shall issue its decisions by majority of votes. In case of equal

<sup>78</sup>For more examples, see AppendicesText5, Text6, Text10, Text19, 36 and Text50.

	voting, the Chairman shall have a casting vote. <sup>80</sup>
--	---

The producer of the ST above specified the position of judge; a professional and qualified judge with a certain level of experience. The translator seems not to have succeeded in conveying the SL term. According to Faruqi's Law Dictionary, "قاضي رئيس" (qāḍīra'īs) is "chief justice". The translator chose "chairman", which is also acceptable and used in legal texts. Moreover, "قاضي مستشار" (qāḍī mustashār) is translated as "counsellor", which does not have any meaning in the target text. The translator probably meant "Councillor" which is "a trained person who gives advice or help" (Black's Law Dictionary, 1999). In the USA it is "a legal practitioner who advises a person in a case" (ibid). The Arabic text refers to a qualified judge and not a legal practitioner.

It seems that when the translator relies on dictionaries he should be aware that some SL lexical items have more than one TL correspondent in the Arabic-English legal dictionary<sup>81</sup>. The translator has to be careful when selecting the right lexical word in order to be as close as possible to the TT word. Thus, the translator between Arabic and English should be aware of "the lengthy lists of equivalents for one SL lexical item by being able to rely on context for deciding the relevant equivalent" (Farghal and Shunnaq, 1999: 34).

However, Larson (1998: 61) points out that the translator will often find that there is no exact equivalent between the words of one language and the words of another. He adds that "there will be words which have some of the meaning components combined in them matching a word which has these components with some additional ones. There will be overlap, but there is seldom a

<sup>80</sup>See Appendices Text 10

<sup>81</sup> Faruqi's Law Dictionary, Arabic-English

complete match between languages”. Larson suggests that it is often necessary to translate one word of the SL by several words in the TL in order to give the same meaning (ibid).

Another classification of legal terms is “Semi-technical” terms which belong to a legal lexis that represents perhaps the most problematic group of terms for a translator between the Arabic and English languages, since it can contain terminology with one or various meanings in the everyday language as well as the specialised legal context. According to Varó and Hughes, the number of semi-technical terms in legal language is expanding and more of such terms are used. Moreover, semi-technical terms are semantically more complex than the other two groups of legal terms i.e. technical and non-technical, and their translation is therefore complicated by their additional and often connotative meanings, the range of partial synonyms and the context (2002: 17).

#### **Example 20 taken from Article (4) OF LAW No (136) of 2004**

<u>مادة (4)</u>	<u>Article (4)</u>
<p>يلتزم الوكيل التجاري بالاتي:</p> <p>منح <u>شهادات الضمان</u> للسلع المعمرة التي يقوم بممارسة عمل الوكالة التجارية فيها، وذلك حسب طبيعة كل سلعة ...<sup>82</sup>.</p>	<p>The Trade Agent shall abide by the following:</p> <p>2. To grant <u>certificates of guarantee</u> for the durable goods in which he performs the Trade Agency activities, as per nature of each commodity.<sup>83</sup></p>

The word “ضمان” (ḍamān) is derived from the root “ضمن” (ḍamina) which according to Faruqi’s Law Dictionary means “warranty”, but has also other meanings depending on the context. The Arabic word “ضمان” (ḍamān) is often translated as “warranty” or “guarantee”. Additional words can be added as

<sup>82</sup>For more examples, see Appendices Text5, Text8, Text20 and Text22.

<sup>83</sup> See Appendices Text 9



a collocation; “ضمان الجودة” (ḍamān al-jawda-warranty of quality). The most popular meaning of the term is attached to responsibility for the quality of the product or services provided, and in this sense it may collocate with the term “warranty”. It has other meanings when it collocates with other words as in: “خطاب ضمان” (khiṭāb ḍamān-letter of indemnity), “شركة ضمان” (sharikat ḍamān-insurance company). The meaning of the ST term has been achieved; however, the translator has not succeeded in conveying the whole legal meaning of the ST. A another translation might be as follows: “to grant certification of guarantee for durable goods in relation to which he performs Trade Agency activities, as per the nature of such goods”.

#### Example 21 taken from Article (4) OF Law No (136) of 2004

<p>مادة (4) يقوم الوكيل التجاري بمايلي:</p> <p>1. إبرام عقد وكالة أو إتفاق مع موكل يتمتع بسمعة جيدة، وتتميز منتجاته أو خدماته بالجودة، والالتقان، ومطابقة الشروط الصحية، والمواصفات القياسية الوطنية أو الدولية المعتمدة للسلع والخدمات....<sup>84</sup></p>	<p>Article (4)</p> <p>The Trade Agent shall abide by the following:</p> <p>To sign an Agency <u>contract</u> or <u>agreement</u> with a principal enjoying good reputation, whose products or services are distinguished by good quality and perfection and conformity with health/hygienic conditions and national or international standards specifications approved for the goods and services...<sup>85</sup></p>
--	---

Other examples of semi-technical Arabic terms are “إتفاقية” (ittifāqiyya) and “عقد” (‘aqad). These two terms have various legal meanings that can in turn be translated into many English equivalents of a purely technical, semi-technical

<sup>84</sup>For more examples, see AppendicesText2, Text3, Text4, Text5, Text8, Text9, Text10, Text12, Text14, Text15, Text16 and Text21.

<sup>85</sup>See Appendices Text 9

and general nature. When approaching the translation of the lexical items “إتفاقية” (ittifāqiyyaa) and “عقد” (‘aqad), their context has to be analysed first: The Arabic lexical items “إتفاقية” (ittifāqiyya) and “عقد” (‘aqad) both have a similar meaning. A contract is an agreement between parties that is legally enforceable and must contain valid elements such as: Offer and Acceptance, Intention to Create Legal Relations, Lawful Consideration, and Capacity of Parties etc. Agreement, however, is an arrangement between the parties which may or may not contain the necessary elements to be enforceable before a court of law. The verb “يبرم” (yubrim) usually collocates with “إتفاقية” (ittifāqiyya), however, the verb “يوقع” (yuwaqqi‘) collocates with “عقد” (‘aqad) e.g. “يبرم إتفاقية” (yubrim ittifāqiyya) or “يوقع عقد” (yuwwaqqi‘ ‘aqad). However, in English, the verb “to sign” can be used for both, e.g. “sign an agreement” and “sign a contract”.

In Example 21 above, the verb “أبرم” (abrama) is used for both “إتفاق” (ittifāq) and “عقد وكالة” (‘aqd wakāla) which is translated literally into English. The Arabic verb “يبرم” (yubrim) however, is more formal and it collocates with “إتفاقية” (ittifāqiyya) to convey the correct meaning. The equivalent translation for “وكالة” (wakāla) in English is “power of attorney”, but it was translated literally in the text above, and this fails to convey the exact ST meaning.

Let us consider the following example:

#### Example 22 taken from Article (16) of Law No (136) of 2004

مادة (16)	Article (16)
<p>يقدم <u>التظلم</u> من ثلاث نسخ، ويسلم إلى أمين سر التظلمات ويسجل في سجل خاص بأرقام متابعة حسب تاريخ التسليم، ويعطى المتظلم إيصالاً يشتمل على البيانات التالية:-</p> <p>1- اسم <u>المتظلم</u>، وموطنه الاصلي.</p> <p>2- تاريخ تقديم <u>التظلم</u>.</p>	<p>The <u>complaint/appeal</u> shall be submitted in three copies, to be delivered directly to the Secretary of the Complaint/Appeal Committee, and recorded in a Special Register with serial numbers as date of delivery. The <u>Appellant</u> shall be given a receipt</p>

3- موضوع التظلم.	including the following data:-
4- توقيع أمين سر لجنة التظلمات. <sup>86</sup>	Name of the <u>Appellant</u> and his legal domicile.
	Date of submission of the <u>complaint/appeal</u> .
	Object of the <u>complaint/appeal</u> .
	Signature of Secretary of the <u>Complaint/Appeal</u> Committee. <sup>87</sup>

Another example of “semi-technical” legal terms in Arabic is “تظلم” (tazallum) in example 22 which means in general language “to express dissatisfaction about something” (Oxford Dictionary of English, 2006). In law, however, a “complaint” is a formal legal document that sets out the facts and legal reasons that the filing party or parties (the plaintiff) believes are sufficient to support a claim against the party or parties against whom the claim is brought (the defendant) that entitles the plaintiff(s) to a remedy (either money damages or injunctive relief) (Black’s Law Dictionary, 1999). So when such a lexical term is translated into English, it could be “claim”, “complaint” or appeal depending on the context. The Arabic lexical term “تظلم” (tazallum) is translated as “Complaint/Appeal”, thus giving the reader the choice between both legal terms. The legal term “Appeal” in English is a process for requesting a formal change to an official decision. A party who files an appeal is called an “appellant”, “plaintiff” in “error”, “petitioner” or “pursuer”. The translator thus has to select an English equivalent with the same legal effect from a selection of words with their different semantic fields depending on the context. The translator has not managed here to transfer the ST meaning as he provided two different English terms for one Legal Arabic term. This may cause ambiguity

<sup>86</sup>For more examples, see Appendices Text 10 and Text 11.

<sup>87</sup>See Appendices Text 11

and translation loss in a/the legal text. A better translation can be suggested as follows: “The complaint shall be submitted in three copies, to be delivered directly to the Secretary of the Complaint Committee, and shall be recorded in a special register with serial numbers and date of delivery”.

**Example 23 taken from Article (28) of Law No 136 of 2004**

مادة (28)	Article (28)
يجوز بقرار من الأمين إضافة أو تعديل الفئات السلعية أو الخدمية المرفقة بهذه اللائحة. <sup>88</sup>	The commodity or service groups attached hereto may be added or amended by <u>decision</u> of the Secretary. <sup>89</sup>

The lexical item “قرار” (qarār) is translated as “decision” in the TT, which may cause a translation problem for the English reader as according to Faruqi’s Law Dictionary, it means also “resolution”. In my opinion, resolution has a better legal implication than “decision”. It is used quite often in Libyan commercial law and translated as “decision”. The translator however, has not achieved the full meaning of the ST by omitting the indefinite article of the “decision”. The ST implies that “a decision” may be amended, etc.

Following our discussion of exclusively legal vocabulary (pure technical) and mixed general and legal terms (semi-technical), Varó and Hughes consider a third class of words, namely “non-technical terms”, which, without losing their everyday sense, occur frequently in the formal contexts we are analysing. They are general words that have maintained their everyday meaning without acquiring legal import but regularly occur in legal texts. According to Varó and Hughes, daily used words are usually easier to understand than to translate when used in legal context (2002: 16). The following examples of such lexical

<sup>88</sup>For more examples, see Appendices Text5, Text6, Text13 and Text17.

<sup>89</sup>See Appendices Text13

items will illustrate some key aspects and problem areas in terms of non-technical terminology translation:

**Example 24 taken from Article (33) of Law No (23) of 2010**

<p>مادة (33) تحقيق الغرض أو استحالة تحقيقه تعتبر الشركة منحلة إذا حققت غرضها.</p>	<p>Article (33) Realization of the Purpose or Impossibility of its Realization The Company shall be considered as dissolved whenever realized its purpose or whenever realization of the same became impossible.<sup>90</sup></p>
---	---

Example 24 above shows the obvious literal translation of most general terms. The translator has not achieved the ST legal meaning by selecting unsuitable words for the TT. The translator seemsto adopt word-for-word translation in order to deal with legal translation difficulties. It can be suggested here to translate that above sentence as: “The Company shall be considered as dissolved whenever it has realized its purpose or whenever such realization of its purpose has become impossible” (my translation).

Other examples can be illustrated as follows:

**Example 25 taken from Article (22) of Law No (23) of 2010**

<p>مادة ( 22 ) الشركة العامة والمختلطة تسري أحكام هذا القانون على الشركات التي تؤسسها الدولة، أو تلك التي تؤول ملكية أسهمها إليها، أو إلى غيرها من الأشخاص الاعتبارية العامة كلياً، أو جزئياً وذلك فيما يرد بشأنه نص خاص في القوانين المنظمة لها.<sup>91</sup></p>	<p>Article (22) Public and Mixed Company The provisions of this law shall apply to the companies to be established by the State or those which the ownership of their shares shall pass wholly or partly totally to it or to other public legal personalities as regards what is</p>
--	--

<sup>90</sup>See Appendices Text 41

<sup>91</sup>For more examples, see AppendicesText3, Text9, and Text27.

	not provided for in laws organizing thereof in a particular manner. <sup>92</sup>
--	---

Indeed, in all of these examples above, the English translational equivalents are very literal translations of Arabic terms. In most cases, such as the literal translation of the legal term “الأشخاص الاعتبارية” (al-ashkhās al-i‘tibāryyia) which is translated literally as “legal personalities”, the relative pronoun “التي” (al-latī) is translated literally as “which”, and the whole sentence is translated literally and the translator just found and used the English equivalents of the words composing the Arabic terms. This simple word-for-word equivalence is based on similarity of linguistic forms. This broad category of literally translated terms can be divided into sub-categories.

Suggested translation: “The provisions of this law shall apply to companies established by the State or to companies the ownership of whose shares shall pass wholly or partly totally to the State or to other public entities as provided in laws thereof in a particular manner” (my translation).

#### **Example 26 taken from Article (31) of Law No (23) of 2010**

<p>مادة (31) نقصان أصول الشركة إذا نقصت قيمة أصول الشركة عن أقل من نصف رأس مالها نتيجة للخسائر المثبتة في قوائمها المالية، وجب على المدير أو المديرين أن يدعوا الشركاء للاجتماع بغرض حل الشركة، أو مواصلة نشاطها بعد إعادة رأس المال إلى مايزيد على النصف على الأقل.<sup>93</sup></p>	<p>Article (31) Decrease in Company Assets If the value of the company assets is decreased by less than half of its capital due to the losses confirmed in its financial statements, <u>the manager or the managers</u> must convene a partners’ meeting for dissolving the company or continuing its activity after reinstating the capital to at least more than half.<sup>94</sup></p>
---	---

<sup>92</sup>See Appendices Text 39

<sup>93</sup>For more examples, see AppendicesText42, Text45 and Text46.

<sup>94</sup>See Appendices Text41

In Example 12, the definite article in “المدير والمديرين” (al-mudīr wa al-mudīrīn) is translated as “the manager or the managers”. The actual meaning in Arabic refers to any managers and definite articles were added correctly to the TT. The translator succeeded in conveying the exact meaning from Arabic into English.

### Example 27 Documents required for Obtaining Necessary Permit for Carrying on the Activity of Commercial Agencies

ملاحظات عامة	General Notices
<p>- يقدم الطلب وفقاً للنموذج المعد لهذا الغرض مرفقاً بإيصال سداد الرسوم المطلوبة وقدرها (150) دينار.</p> <p>- تتولى الإدارة دراسة المستندات والبث فيها وفي حالة الموافقة وصدور قرار بالإذن بمزاولة النشاط يجب على الوكيل وخلال شهر من تاريخ صدور الإذن تقديم المستندات الآتية:</p>	<p>The application shall be presented in accordance with the form made for this purpose, attached therewith the prescribed fees equal to (L.D 150).</p> <p>The Department shall examine the documents and decides therein. In case for approval by this department and issuance of decision <u>permitting</u> the carrying on of this activity, the agent shall, within one month from the date of decision, submit the following documents:<sup>95</sup></p>

In Example 29, “في حالة الموافقة” (fī ḥālāt al-mwafaqa) is translated literally as “in the case for approval” which is not correct. The correct proposition is “of” in “in the case of approval”.

### Example 28 taken from The Executive Regulation for Law No (21) of 2001 for performing Economic Activities

مادة (4)	Article (4)
<p>لا يجوز الترخيص بمزاولة الأنشطة الاقتصادية التي يتطلب القانون لمزاومتها إذناً خاضعاً إلا بعد صدور الإذن من الجهة المختصة، كما لا يجوز الترخيص بمزاولة</p>	<p>It is not <u>allowed</u> to license for performing economic activities requiring legally specified permission, except after issue of permission from</p>

<sup>95</sup>See Appendices Text23

<p>أكثر من نشاط واحد، ولا يجوز للموظفين العاملين في الدولة طيلة فترة عملهم مزاوله الأنشطة الاقتصادية الخاصة، وذلك وفقاً لأحكام هذه المادة.</p>	<p>the competent body.</p> <p>It is not <u>allowed</u> to the State employees during the period of their services to perform private activities, under the provisions of this Regulation.<sup>96</sup></p>
--	--

In Example 28, the translator used the lexical item “allowed” which is too informal, with the term “permitted” being more suitable in such texts. The term which is normally used by legal translators in legal texts is “permitted”, according to Faruqi’s Law Dictionary. The translator does not seem even to have consulted a legal dictionary.

**Example 29 taken from Article (1) of Decision of the General People’s Committee No (138) of (2004)**

<p>مادة (1) يعمل بأحكام اللائحة التنفيذية للقانون رقم (5) لسنة 1426 ميلادية المعدل بالقانون رقم (7) لسنة 1371 و.ر. ، في شأن تشجيع إستثمار رؤوس الأموال الأجنبية ، المرفقة نصوصها بهذا القرار.<sup>97</sup></p>	<p>Article (1) The provisions of the <u>executive</u> regulations for Law No. (5) of (1997), as amended by Law No. (7) of (2003) for the <u>promotion</u> of investment of foreign capital, attached hereto, shall be applicable.<sup>98</sup></p>
--	--

**Example 30 taken from The Executive Regulations for Law No (5) of 1997**

<p>الباب الأول مجالات الاستثمار والنظر في طلباته<sup>99</sup></p>	<p>Chapter One Fields of Investment and Consideration of the Relevant Applications<sup>100</sup></p>
---	--

<sup>96</sup>See Appendices Text26

<sup>97</sup>For more examples, see AppendicesText38 and Text50.

<sup>98</sup>See Appendices Text 6

<sup>99</sup>For more examples, see AppendicesText38 and Text50.

<sup>100</sup>See Appendices Text50



### Example 31 taken from The Executive Regulations for Law No (5) of 1997

اللائحة التنفيذية للقانون رقم (5) لسنة 1426 ميلادية (1997 مسيحي) المعدل بالقانون رقم (7) لسنة 1371 و.ر (2003 مسيحي) في شأن تشجيع إستثمار رؤوس الأموال الأجنبية <sup>101</sup>	The Executive Regulations for Law No. (5) of 1426 PB (1997) as Amended by Law No.(7) of 1371 PD(2003) for Promotion of Investment of Foreign Capitals, <sup>102</sup>
---	---

In Example 31, “رؤوس الأموال” (ru’ūs al-amwāl) is translated literally as “Capitals”. Plural between Arabic and English can also cause a problem in translation due to the difference in their plural systems. English count nouns can be singular or plural, whereas Arabic has the dual plural in addition (Farghal and Shunnaq, 1999: 52). “Capital” can only be singular in English as it is a collective noun. However, in Arabic it can be both. So the translator should be aware of the difference between the two languages.

One can note that the concepts expressed by the terms are general concepts which do not cause serious misunderstanding for the TT reader; but the translator should still be aware of such errors and try to avoid them.

### Example 32 taken from Article (11) of the Executive Regulations for Law No (5) of 1997

2. وثيقة التفويض في الاختصاصات ، أو التوكيل بالإدارة الصادرة لمدير المشروع وممثله القانوني ، على أن تتضمن بياناً واضحاً باختصاصاته، ومدة صلاحية التفويض أو التوكيل. <sup>103</sup>	2. Authorization document for function/power or <u>power of attorney</u> for management, as issued to the Project Manager or his legal representative, indicating clearly his powers & validity of authorization or power of attorney. <sup>104</sup>
--	---

<sup>101</sup>For more examples, see AppendicesText38 and Text50.

<sup>102</sup>See Appendices Text50

<sup>103</sup>For more examples, see AppendicesText8 and Text9.

<sup>104</sup>See Appendices Text51

The legal terms in Example 32 such as “التوكيل” (at-tawkīl-power of attorney), “دائرة” (dā’ira-jurisdiction), “التفويض” (tafwīd.-Authorization), “ممثله القانوني” (mumathil qānūnī-legal representative), and “صلاحية التفويض” (ṣalāḥiyat al-tafwīd-powers and validity of authorization) all seem to be translated correctly as individual terms. But within the context, they do not serve to convey the exact meaning of the ST as the translator used word-for-word or dictionary translation which could cause legal consequences and translation loss in the TT.

**Example 33 Article (11) of the Executive Regulations for Law No (5) for 1997**

<p>مادة (14)</p> <p>عقد الشركة</p> <p>يجب ، في غير شركات المحاصة - أن يعون عقد الشراكة ونظامها الأساسي في شكل محررات رسمية، ويجب أن يتضمن العقد والنظام الأساسي للشركة شكلها القانوني، واسمها، ومدتها، ومقرها، ومركزها الرئيسي، ورأس المال المدفوع منه في الحالات التي يتطلبها القانون، وأغراضها بمراعاة وحدة الغرض والتخصص بالكيفية أو الصورة التي ينظمها قرار يصدر عن اللجنة الشعبية العامة.</p> <p>وفي جميع الأحوال يراعى أن يتناسب عمل الشركة مع رأس مالها وفقاً لتصنيف</p>	<p><u>Article 14</u></p> <p><u>Company’s Memorandum of Association</u></p> <p>In other than partnership companies, the memorandum and articles of association of the company should be in a form of official entries. The memorandum and articles of association of the company should contain its legal form, name duration, office, headquarters, paid capital in cases required by law and its purposes, in consideration of the unity of purpose and specialization in a manner of form to be organized under a resolution to be issued by the General People’s Committee.</p> <p>In all the cases, the company activity shall be appropriate to its capital according to classification of the companies to be issued under a</p>
---	--

الشركات الذي يصدر به قرار من اللجنة الشعبية العامة. <sup>105</sup>	resolution of the General People's Committee. <sup>106</sup>
--	--

**Example 34 taken from Article (22) of Law No. (23) of 2010**

مادة (22)	Article (22)
الشركة العامة والمختلطة	<u>Public and Mixed Company</u>
تسري أحكام هذا القانون على الشركات التي تؤسسها الدولة، أو تلك التي تؤول ملكية أسهمها إليها، أو إلى غيرها من الأشخاص الاعتبارية العامة كلياً، أو جزئياً وذلك فيما يرد بشأنه نص خاص في القوانين المنظمة لها.	The provisions of this law <u>shall</u> apply to the companies to be established by the State or those which the ownership of their shares shall pass wholly or partly totally to it or to other public legal personalities as regards what is not provided for in laws organizing thereof in a particular manner <sup>107</sup> .

In Example 33 above, although the translator managed to convey the main terms correctly, as in “عقد الشراكة ونظامها الأساسي” (‘aqd al-sharāka) which is translated as “memorandum and articles of association”, nonetheless there are some other terms the translator does not seem to have succeeded in transferring correctly. An example is the expression “رأس المال المدفوع” (ra’s al-māl al-madfū‘) which was translated as “paid capital”, whereas the ST meant “paid-in capital” for “رأس المال المدفوع”. There are still some problems in understanding the whole meaning as one Article. For instance, “في شكل محررات رسمية” is translated as “in a form of official entries”, when in English it would be more idiomatic using the definite article as “in the form of”. The Arabic verb “يتضمن” (yataḍamman) is translated literally as “contain”; however, the legal meaning of the source text means “state”, as in “the company should state its legal forms”.

<sup>105</sup>For more examples, see AppendicesText25

<sup>106</sup>See Appendices Text 38

<sup>107</sup>See Appendices Text 39

Similarly, one can notice in Example 34 above the TT version “companies to be established by the State or those which the ownership of their shares” is translated as “الشركات التي تؤسسها الدولة، أو تلك التي تؤول ملكية أسهمها إليها”. The pronoun “it” is avoided in legal texts in English as it causes ambiguity more than it does in Arabic. It is better if the noun “the state” is repeated instead. The terms “public legal personalities” of the ST “الأشخاص الاعتبارية العامة” (al-ashkhāṣ al-i’tibāriyya al-‘āmma) do not express the Arabic ST, which means in legal language “public entities” as expressed in the Arabic text. The last part of the Article “as regards what is not provided for in laws organizing thereof in a particular manner” is literally translated and it does not have a clear meaning in the English TT. It can be suggested to translate Example 34 as “The provisions of this law shall apply to companies to be established by the State or to companies the ownership of whose shares shall pass wholly or partly totally to the State or to other public entities as regards what is not provided for in laws organizing thereof in a particular manner” (my translation).

In many cases, the English translation of the Arabic is either literal or incomplete. An English term translated literally may not express completely what the Arabic term says, as is the case in the example below:

**Example 35 taken from Article (4) Sec. 2 Libyan Resolution No. 136 2004**

<p>منح شهادات الضمان للسلع المعمرة التي يقوم بممارسة عمل الوكالة التجارية فيها، وذلك حسب طبيعة كل سلعة .....<sup>108</sup></p>	<p>To grant certificates of guarantee for durable goods in relation to which he performs Trade Agency activities, as per the nature of each commodity.<sup>109</sup></p>
--	--

<sup>108</sup>For more examples, see AppendicesText20 and Text22.

<sup>109</sup>See Appendices Text9

### Example 36 taken from Article (17) Libyan Resolution No. 136 of 2004

مادة (17)	Article (17)
<p>تُدعى لجنة التظلمات المنصوص عليها في المادة (15) من هذه اللائحة، إلى الاجتماع بدعوة من مؤسسها، وتوجه الدعوة إلى الأعضاء، مُبيناً بها زمان الاجتماع ومكانه وذلك قبل التاريخ المحدد له بمدة اسبوع على الأقل، ويرفق بالدعوة جدول الأعمال المعروض وصور من التظلمات، والقرارات المتظلم منها، ويكون قرار هذه اللجنة في شأن التظلم نهائياً وملزماً.<sup>110</sup></p>	<p>The secretary of Complaint/Appeal committee specified in Article (15) hereof shall be <u>invited for meeting</u> by its Chairman. The <u>invitation</u> shall be sent to the members, indicating the time and place of meeting one week at least before the date specified for the <u>meeting, enclosing therewith</u> the agenda and copies of the complaints/appeals and the appealed decisions. The decisions of this committee regarding the complaint/appeal shall be final &amp; binding.<sup>111</sup></p>

In Example 35 above, the Arabic words “كل سلعة” (kull sil'a) are translated literally into English as “each commodity”; however, I would better translate it as “such goods”, as follows: “To grant certificates of guarantee for durable goods in relation to which he performs Trade Agency activities, as per the nature of such goods.” In Example 39, the English text does not translate fully the Arabic text. The lexical items “كل سلعة”, expressed by “such goods”, refer to “السلع المعمرة” (as-sili' al-mu'ammira-durable goods) and would be more idiomatic if rendered as “such goods”.

### Example 37 taken from Article (31) of Law No. (23) of 2010

مادة (31)	Article 31
نقصان أصول الشركة	<u>Decrease in Company Assets</u>
إذا نقصت قيمة أصول الشركة عن أقل من نصف	If the value of the company assets is

<sup>110</sup>For more examples, see Appendices Text10 and Text11.

<sup>111</sup>See Appendices Text11

<p>رأس مالها نتيجة للخسائر المثبتة في قوائمها المالية، وجب على المدير أو المديرين أن يدعوا الشركاء للاجتماع بغرض حل الشركة، أو مواصلة نشاطها الى ما يزيد عن النصف بعد إعادة رأس الى ما يزيد عن النصف على الأقل.<sup>112</sup></p>	<p>decreased by less than half of its capital due to the losses confirmed in its financial statements, the manager or the manager must convene partners meeting for dissolving the company or continuing its activity after reinstating the capital to at least more than half.<sup>113</sup></p>
---	---

### Example 38 taken from Article (31) of Law No. (23) of 2010

<p>المادة (6) حالة استثنائية</p> <p>يعد مزاولاً للنشاط التجاري، وإن لم يتخذ التجارة نشاطاً معتاداً له، كل من أعلن في الصحف أو النشرات أو أية وسيلة أخرى عن المحل الذي أسسه، وفتحه للأشتغال بالمعاملات التجارية<sup>114</sup></p>	<p><u>Article 6</u> <u>An Exceptional Case</u></p> <p>Anyone who declared in <u>the press or circulars or any other means</u> of the shop which he established and opened for engaging in Commercial transactions shall be considered as a probationer of commercial activity.<sup>115</sup></p>
--	--

In Example 37, the term “invite for a meeting” from the Arabic “دعوة للاجتماع” (da‘wa lil-ijtimā‘) does not convey clearly the exact meaning. The English term “to convene” usually collocates with a “meeting” in English legal texts, as in “to convene a meeting of shareholders” (Black’s Law Dictionary, 1999). The incomplete translation may cause an ambiguity as in: “ويرفق بالدعوة جدول الأعمال” is not fully translated and the translator has failed to render “the agenda of the meeting together with copies of the complaints/appeals”. The idea of “enclosing the agenda” has something to do with “the meeting”, but it is not expressed in the TT. Possibly the translator

<sup>112</sup>For more examples, see AppendicesText41, Text42, Text45 and Text46.

<sup>113</sup>See Appendices Text41

<sup>114</sup>(6) of Law No. (23) of(2010) regarding Commercial Activities.

<sup>115</sup>See Appendices Text36

assumed that the reader already knows that ‘enclosing the agenda’ is usually associated with “meeting”. Moreover, the Arabic text “أو مواصلة نشاطها بعد إعادة رأس المال” is translated as “or continuing its activity after reinstating the capital”. This translation does express the whole meaning in the TT.

It is also the case in Example 38 that the TT “Anyone who declared in the press or circulars or any other means” rendering of the Arabic “كل من أعلن في الصحف أو النشرات أو أية وسيلة أخرى” is incomplete and does not express the Arabic ST. The translator has not succeeded in rendering the ST meaning, which can be better translated as: “Anyone who has publicly announced in the press or by advertising or in any other manner”. The translator seems either to have translated literally or failed to translate the whole sentence.

Most likely, the translator in most of the examples above was concerned with finding the equivalent which he thought might convey the meaning of the ST. The fact that he did not succeed shows that no fully equivalent terms can be found across languages when both languages are completely different. It could be the deliberate intention of the translator to give these translations, as he could not find the correct terms. As it can be noticed in some sections above, the English translation does not seem to encompass all the ideas expressed by the Arabic, while in some other cases, the English translation says something different from the original. Kingscott points out that “there should never be deterioration in communication from source text to translated target text” (1998: 4). This does not mean that the translator of a legal text has no right to add or omit; rather, additions and omissions may be good tools in order to achieve a translation without any deterioration. Many SL words need to be explained; others need to be omitted. Kingscott also adds that the translator of legal texts, assuming that he is professional, is expected to improve the target text and make it clearer to the reader by explaining any ambiguities, on the one hand, and by

re-structuring the text to fit the norms of the TL, on the other hand (ibid). The examples below illustrate this point:

**Example 39 taken from Article (5) of Law No. (23) of 2010**

مادة (5)	<u>Article 5</u>
تعريف مزاول النشاط التجاري	<u>Definition for Practicing Commercial Activity</u>
يعتبر <u>مزاولاً</u> للنشاط التجاري كل من <u>بأشِر</u> أعمالاً تجارية، واتخذها حرفة معتادة له، وتطبق بشأن النشاط الأسري الأحكام المنظمة لشركة المحاصة.	Anyone who <u>starts</u> commercial works and <u>takes</u> thereof as his usual profession shall be considered a commercial activity practitioner. As regards the family activity, the provisions of organizing a particular partnership shall be applied <sup>116</sup> .

In Example 39, the word “بأشِر” (bāshara) is translated in the English text as “start”, which does not exactly convey the ST meaning. The Arabic text specifies who can “undertake” commercial activities. Moreover, the addition of the adverb “thereof” does not have any legal meaning in the TT. The words “and undertakes thereof” is an addition. The translator may have added these lexical items in order to make it sound more legalistic, or it may be just a mistranslation of the Arabic text. This addition is in fact an informal way of using the term “undertake”. The Arabic text does not seem to have the meaning of the word “start” and it does not appear to be necessary to use it in the English text. The translator may have tried to make the English text clearer by using simple verbs in order to make the English text easier to understand. However, the translator did not manage to convey the meaning by adding “takes thereof” which is incorrect and offers no meaning in the above example. It can be suggested to translate Example 39 as “Anyone who undertakes commercial works as his

<sup>116</sup>See Appendices Text36



usual profession shall be considered a commercial activity practitioner. As regards the family activity, the provisions of organizing a particular partnership shall be applied” (my translation).

**Example 40 taken from Article (3) of the Executive Regulations for Law No. (5) of (1997)**

وعلى هذه الجهات إحالة الطلبات فور تقديمها إلى الهيئة.	Such bodies shall refer the applications immediately on submission <u>thereof</u> to the Board. <sup>117</sup>
---	--

**Example 41 Article (28) of Law (136) of (2004)**

يجوز بقرار من الأمين إضافة أو تعديل الفئات السلعية أو الخدمية المرفقة بهذه اللائحة. <sup>118</sup>	The commodity or service groups attached <u>hereto</u> may be added or amended by decision of the Secretary. <sup>119</sup>
--	---

**Example 42 Article (5) of Law No. (6) of (2004) for organizing Trade Agency Activities**

تقسم السلع والخدمات لأغراض مزاولة عمل الوكالة التجارية إلى فئات سلعية وخدمية متجانسة يؤذن للشخص بممارسة النشاط في فئة واحدة منها على الأكثر ويجوز للجنة أن تأذن لبعض الأشخاص الاعتبارية بممارسة أكثر من فئة واحدة وذلك في الحالات التي تراها لازمة أو ضرورية لعمل الوكالة التجارية. <sup>120</sup>	The commodities and services shall be divided for the purposes for performing Trade Agency activity into homogeneous /consistent commodity and service categories permitted for the person to perform the activity in one category thereof as maximum. he committee may permit certain artificial bodies to perform more than one category in the cases deemed
--	--

<sup>117</sup>See Appendices Text52

<sup>118</sup>For more examples, see AppendicesText5 and Text6.

<sup>119</sup>See Appendices Text13

<sup>120</sup>For more examples, see AppendicesText7, Text8, Text9, Text20, Text22 and Text28.

	necessary for the work of Trade Agency. <sup>121</sup>
--	--

In Examples 40 and 41, the addition of the adverbs “hereto” and “thereof” is necessary because this is the way legal documents are written in English. The translator has this time succeeded in this addition as he is supposed to use the conventional legal formulations of the target language. The meaning is correctly expressed by using additional information which is not in the ST. The translator unnecessarily added the adverb “thereof” to the TT in Example 42. It has no meaning and may cause translation ambiguity. Additions to the target text may add information to help the target reader know exactly what is being talked about. As long as these additions do not introduce new ideas, they are justified (Shunnaq, 1992: 36). This can be noticed in Example 42 above when the addition and repetition occurred.

#### **Example 43 taken from Article (7) of Law No. (23) for 2010**

<p>مادة (7) السن القانونية لمزاولة النشاط التجاري يجوز لمن بلغت سنه ثماني عشرة سنة كاملة أن يقوم بمزاولة النشاط التجاري مالم يتطلب تشريع آخر أهلية أعلى<sup>122</sup></p>	<p>Article 7 <u>Legal Age for Practicing Commercial Activity</u>  Anyone who attained activity in full eighteen years of age may practice commercial activity unless another legislation requires higher qualification.<sup>123</sup></p>
---	---

#### **Example 44 taken from Article (16) of Law No. (23) of 2010**

<p>مادة (16)  بيانات مستندات الشركة</p>	<p>Article 16 <u>Data of Company Document</u></p>
---	---

<sup>121</sup>See Appendices Text3

<sup>122</sup>For more examples, see AppendicesText35, Text36 and Text37.

<sup>123</sup>See Appendices Text36

<p>يجب أن يُذكر في مستندات الشركة ومراسلاتها مركز الشركة الرئيسي، ومكتب السجل التجاري المقيمة به، ويجب بالنسبة للشركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسؤولية المحدودة أن يُذكر زيادةً على ماتقدم رأس المال المكتتب فيه والمدفوع منه فعلاً.<sup>124</sup></p>	<p>The company head office, the Commercial Register Office in which it is registered, registration number must be laid-down in documents and correspondence of the company. As regards Joint-Stock Companies, companies limited by shares and limited liability companies there should be laid-down; in addition to the above the subscribed capital and the actually paid thereof.<sup>125</sup></p>
---	---

#### Example 45 Article (253) of Law No. 23 of 2010

<p>مادة (253)</p> <p>تعيين ممثليها في الشركات التابعة</p> <p>تقوم الشركة القابضة بتعيين ممثليها في الشركات التابعة لها بنسبة مساهمتها في رأس المال.</p> <p>وإذا كانت الشركة التابعة مملوكة بالكامل للشركة القابضة، اعتبر مجلس إدارة الشركة القابضة جمعية عمومية للشركة التابعة، وإذا كانت الشركة التابعة بدورها شركة قابضة، اعتبر مجلس إدارتها جمعية عمومية للشركات التابعة لها.<sup>126</sup></p>	<p><u>Article 253</u></p> <p><u>Nomination of its Representative in the Subsidiaries</u></p> <p>The Holding Company shall nominate its representatives in its subsidiaries at the amount of their contribution to the capital. If the subsidiary company is fully owned by the holding company, the Board of Directors of the Holding company shall be considered as a General Assembly of the Subsidiary. If the Subsidiary in its turn is a Holding Company, then the Board of its Directors shall be considered as a General Assembly of its Subsidiaries.<sup>127</sup></p>
--	---

<sup>124</sup>For more examples, see AppendicesText6, Text7, Text8, Text38 and Text50.

<sup>125</sup>See Appendices Text38

<sup>126</sup>For more examples, see Appendices Text25.

<sup>127</sup>See Appendices Text53

In Example 43, the English translation “activity in full” is simply an addition which does not add any information to the text. The translation of “لمن بلغت سنه” “ثمانى عشرة سنة كاملة” can be rendered without the additional information as “Anyone who has attained eighteen years of age” which conveys the exact meaning for the English reader. Example 44 above also shows some mistranslation of some words of the ST such as “يُذكر” (yudhkar) translated as “laid down” instead of “disclosed” which is more idiomatic. Furthermore, there is the omission of “in” in translating “المدفوع منه” (al-madfū° minhu) as “paid” instead of “paid-in”. The addition of the last part “the actually paid therefore” does not make sense and does not convey the exact meaning. It can be translated as “in addition to the above the company’s subscribed capital and paid-in capital”.

In Example 45, the translation of the definite article “the” in the TT as in “the board of its directors” is conveyed as in the original. The translation “the Holding company” in “the Holding company shall be considered as a General Assembly of the Subsidiary” is also conveyed successfully by the translator.

#### **Example 46 taken from Article (19) of Law No. (23) of 2010**

المادة (19)	<u>Article 19</u>
حظر فصل الشريك	<u>Prohibition of Partner Dismissal</u>
لا يجوز طرد الشريك من الشركة إلا في الحالات التي تبيح فيها القانون ذلك، أو في الحالات المنصوص عليها في العقد، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقه.	The partner may not be dismissed from the company unless in cases allowable by the law or in cases provided for in the memorandum or the Articles of Association. The partner obligation

	also may not be emphasized unless with him consent <sup>128</sup> .
--	---

**Example 47 taken from documents required for obtaining necessary permit for carrying the activity of commercial agencies**

تتولى الإدارة دراسة المستندات والبث فيها وفي حالة الموافقة وصدور قرار بالإذن بمزاولة النشاط يجب على الوكيل وخلال شهر من تاريخ صدور الإذن..... <sup>129</sup>	The department shall examine the documents and decides therein. In case of approval by this department and issuance of <u>decision</u> permitting the carrying on this activity, the agent shall, within one month from the date of decision ... <sup>130</sup>
--	---

**Example 48 taken from Article (14) of a guiding form for contract for reforming trade agency**

للكيل التجاري والموكل فض المنازعات التي تنشأ بينهما بالطرق الودية او عن طريق (التحكيم أو التوفيق)، فاذا لم يتم التوصل الى حل يرضي الطرفين تعين عليها اللجوء الى القضاء الليبي لفض المنازعات التي تنشأ بينهما. <sup>131</sup>	The Trade Agent and the principle shall settle the disputes arising between them amicably or through arbitration or conciliation. If no solution satisfactory to both parties is reached they shall recourse to <u>the Libyan Judiciary / court</u> for settlement of the disputes arising between them. <sup>132</sup>
--	---

In Example 46, the ST would sound more idiomatic by to starting with “a partner” instead of “the partner”, since it does not specify a particular partner. Moreover, the translator seems to have used “unless” instead of “except” in

<sup>128</sup>See Appendices Text39

<sup>129</sup>For more examples, see AppendicesText4, Text5 and Text8.

<sup>130</sup>See Appendices Text23

<sup>131</sup> Article (14) See note 26

<sup>132</sup>See Appendices Text22

“The partner may not be dismissed from the company unless in cases allowable by the law”. It would be more accurate if rendered as “A partner may not be dismissed from the company except in cases allowed by the law”. Furthermore, in “the article”, the translator added “the” to the lexical item “Articles” once, which is unnecessary. Adding “the” does not affect the meaning of the ST anyway. It can be suggested to translate Example 46 as “A partner may not be dismissed from the company except in cases allowed by the law or in cases provided for in the memorandum or Articles of Association. The obligations of a partner may not be increased without his consent” (my translation).

In the last sentence of Example 45 above, the translator used the lexical item “emphasized” instead of “increased”. He also used the lexical item “unless” again unnecessarily. This may result in illogical translation. When the translator under-translates a term, it may give another meaning. The last sentence can be rendered as “The obligations of a partner may not be increased without his consent”.

In Example 47, the translator due to the grammatical differences between Arabic and English when the indefinite article “a” does not exist in Arabic as in “a decision” in the TT above, there may be difficulties in translating such articles. Another irrelevant addition is “the Libyan Judiciary/court” in Example 47, which is redundant because the original text refers to law only. The translator added extra information unnecessarily. Therefore, “they shall have recourse to law for settlement” conveys the exact meaning for the English reader.

### **6.2.1 Binomial Collocations**

Another feature of both legal Arabic and English texts that may cause problems in translation is ‘Binomial Collocations’ of synonyms or near-synonyms. Binomials are certainly common in legal Arabic as well as in English legal texts; according to Gustafsson, “binomials occurred more than five times more

often in legal language than the other prose styles” (1984: 123-141)<sup>133</sup>. The advantage of using pairs of synonyms in legal English was ‘to rely on inclusiveness as compensation for lack of precision’ (ibid: 208).

The following examples illustrate such feature:

**Example 49 taken from Article (19) of Law No 23 of 2010**

<p>المادة (19) حظر فصل الشريك لا يجوز طرد الشريك من الشركة إلا في الحالات التي تبيح فيها القانون ذلك، أو في الحالات المنصوص عليها في العقد، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقه.<sup>134</sup></p>	<p>Article 19 Prohibition of Partner Dismissal The partner may not be dismissed from the company unless in cases allowable by the law or in cases provided for in the memorandum or the Articles of Association. The partner’s obligation also may not be emphasized unless with his consent.<sup>135</sup></p>
---	---

In certain cases such as Example 49 above, the Arabic “الحالات المنصوص عليها” (al-ḥālāt al-manṣūṣ ‘alayhā) does not seem congruent with the English one “memorandum” which is usually translated as a binomial in English as “memorandum of understanding” in legal texts. A possible translation can be as follows: “The partner may not be dismissed from the company other than in cases allowed by law or in cases provided for in the memorandum of understanding or the Articles of Association. The partner’s obligation also may not be emphasized without his consent”. The literal translation of the terms “the law” and “unless” makes the target text sound awkward.

Other examples can be shown below:

**Example 50 taken from Article (1) of Law No (6) of 2004**

<p>والمدعي عليها المدعي الشروط والإجراءات<sup>136</sup> الضوابط والشروط<sup>137</sup></p>	<p>plaintiff and defendant conditions and procedures Regulations and conditions</p>
---	---

<sup>133</sup> See also Crystal and Davy (1969).

<sup>134</sup> See Appendices Text9, Text28, Text29, Text38, Text39, Text41, Text44 and Text47.

<sup>135</sup> See Appendices Text 39

<sup>136</sup> Article (11) Law No. (6) of 2004 for Organising the Activities of Trade Agencies

تعهدات وإلتزامات <sup>138</sup>	undertaking and obligation <sup>139</sup>
---------------------------------	---

The translator in Examples above seems to have succeeded in transferring the collocation's meaning into English. More frequently, a fully congruent expression is lacking, in which case the binomial may be translated literally, e.g: “المنتجات أو الخدمات” (al-muntajāt wal-khadamāt-products or services), “تأسيساً” (ta’sīsan ṣaḥīḥan-to be properly established), and “السلع أو المنتجات” (al-sili<sup>c</sup> aw al-muntajāt-goods or products).

### 6.3 Syntactic Features

There is no doubt that Arabic and English are completely different in terms of syntax. Dues to this, Arabic syntax is a lot more complicated than the English syntax since modern Arabic language relies on the classic Arabic syntax which is based on very complex rules. This leads to additional difficulties in translation for the Arabic translators. This part will only analyse the some significant syntactic featuresbetween Arabic and English such as; passive, modality.

#### 6.3.1 Passive

Passive is quite common in both Arabic and English legal language. The examples illustrate the difference between the two languages:

#### Example 51 taken from Article (1359) of Law No (23) of 2010

<p>مادة (1359)</p> <p><u>نفاذ القانون</u></p> <p>يعمل بهذا القانون اعتباراً من تاريخ نشره في مدونة التشريعات، وعلى المعنيين تسوية</p>	<p><u>Article 1359</u></p> <p><u>Effectiveness of the Law</u></p> <p>This Law shall <u>come into force</u> with</p>
---	---

<sup>137</sup> Article (1) Law No. (6) of 2004 for Organising the Activities of Trade Agencies

<sup>138</sup> A Guiding Form for Contract or Agreement For Reforming Trade Agency

<sup>139</sup> See Appendices Text 3 – 6



اوضاعهم طبقاً لأحكامه خلال فترة ستة أشهر من تاريخ نشره. <sup>140</sup>	effect from the date of its publication in the legislations code and the concerned authorities shall adjust their positions according to its provisions during (6) six months from its publication. <sup>141</sup>
--	--

By looking at the word “يُعمَل” (yūmal) in Example 51 and its English translation, it can be noticed that the number of words increased in the TT and also the position of the verb has shifted and translated into the phrase “come into force” which means “come into effect” or “become effective”. Moreover, the modal verb “shall” found in the TT since it is traditionally used in English legal language (See Chapter Five, section 5.3.2.3.2). This is due to the difference between the two languages. The translator however, has succeeded in conveying the meaning in English.<sup>142</sup>

### 6.3.2 Modality

English modality is usually expressed by modal verbs such as “can, could, shall, should, must, may” etc. Arabic also has many equivalent modal auxiliaries (Farghal and Shunnaq, 1999: 82).<sup>143</sup> Legal texts by their nature exhibit a variety of “modal” meanings essential to their content and texture. Therefore, by examining the texts below, it can be noticed that translating modal verbs from Arabic into English raises a number of problematic issues. The main modal verbs that are used in English texts are discussed in examples below:

<sup>140</sup> See Appendices Text6, Text18, Text19, Text20, Text25 and Text52.

<sup>141</sup> See Appendices Text52

<sup>142</sup> For more examples of passive, see Appendices Text6, Text9, Text10, Text11, Text12, Text18, Text19, Text20, Text25, Text36, Text44, Text47, Text50 and Text52.

<sup>143</sup> See Chapter Five, section 5.3.2.3.2

### 6.3.2.1 Shall

The lexical item “shall” is regarded as one of the distinguishing features of English legal language. It is used in legislation and contracts and other legal documents, to signify something imperative or mandatory. In the ordinary speech, the lexical item “shall”, always expresses a form of command and always carries the meaning of “desirable or appropriate to do”. Its normal use can mean “must” but this does not merely signify guidance or directions. The importance of ‘shall’ rests on the fact that it completely eliminates the idea of freedom of behaviour or discretion (Black’s Law Dictionary, 1999: 1375).

Arabic likewise uses verbs to express an imperative or mandatory mode such as “يجب” (yajib), “تلتزم” (taltazim), “يجوز” (yajūz) etc. Modality in English may cause ambiguity and confusion to the translator from Arabic into English since the use of modality in English is different from Arabic, and the use of “shall” in English has various uses (See Chapter Five, section 5.3.2.3.2). It could mean “يجب” (yajib-must). Arabic also uses verbs to express the degrees of necessity or obligation (Farghal and Shunnaq, 1999: 82).

Consider the examples below:

#### Example 52 taken from Article (4) of Law No (23) of 2010

المادة 4	Article 4
تطبيق العرف	Application of Tradition
على القاضي عند تحديد آثار النشاط الاقتصادي أن يطبق العرف المستقر إلا إذا تبين أن المتعاقدين قصدوا مخالفة أحكام العرف أو كان العرف متعارضاً مع النصوص التشريعية التجارية الأمرة.	On determination of the economic activity effects, the judge <u>should</u> apply the established tradition except if it is appeared that the contracting parties have intended to contradict the tradition provisions or the tradition was in conflict with ordered commercial legislative terms.
ويُعد العرف الخاص والعرف المحلي مرجحين على العرف العام	The special and local traditions are

	overweighting the general tradition. <sup>144</sup>
--	---

### Example 53 taken from Article (16) Libyan Resolution No. 136 2004

يقدم التظلم من ثلاث نسخ، ويسلم إلى أمين سر التظلمات ويسجل في سجل خاص بأرقام متتابعة حسب تاريخ التسليم، ويعطى المتظلم إيصالاً.... <sup>145</sup>	The complaint/appeal <u>shall</u> be <u>submitted</u> in three copies, to be delivered directly to the Secretary of the Complaint/Appeal Committee, and recorded in a Special Register with serial numbers as date of delivery. The Appellant <u>shall</u> be <u>given</u> a receipt.... <sup>146</sup>
---	---

In Example 52 above, the ST is clearly expressing the concept of ‘commitment’ which is realized by the preposition “على” (‘alā) followed by a nominal phrase referring to the “judge”. The preposition “على” (‘alā) can be also preceded by “يجب” (yajib) to mean “must” or “shall” in English. In Example 52, “shall” is used twice; first, to signify duty on the “judge” to apply the tradition, and secondly, as an auxiliary verb in the future to state that the local traditions shall have greater weight than general tradition. In my opinion, the translator failed twice to express the meaning of the ST in the TT. It can be suggested to translate Example 52 as “On determination of the economic activity effects, the judge shall apply the established tradition except if it has appeared that the contracting parties have intended to contradict the tradition provisions or the tradition was in conflict with ordered commercial legislative terms. Special and local traditions shall have greater weight than general traditions” (my translation). In Example 53, the ST first clarifies the necessity of submitting

<sup>144</sup>See Appendices Text 36

<sup>145</sup>See Appendices Text10 and Text11.

<sup>146</sup>See Appendices Text11

three copies of the complaint, “يُقدم التظلم من ثلاث نسخ” (yuqaddam al-taz.allum min thalāth nusakh) and second it shall be recorded in the Special Registrar “يسجل في سجل خاص” (yusajjal fī sijill khāṣṣ.). In both cases, a duty is imposed by using the verbs “يُقدم” (yuqaddam) and “يسجل” (yusajjal). The translator expressed successfully the lexical item “يُقدم” (yuqaddam) in its passive form preceded by “shall”. However, he did not convey the correct ST meaning in “تسجل”. The Arabic passive imposes duty and in this case, “shall” is required before each verb in the TT.

#### Example 54 taken from Article (16) Libyan Resolution No. 136 2004

مادة (18)	<u>Article 18</u>
مراجع الحسابات الخارجي	<u>External Auditor</u>
يجب على كل شركة منظمة بأحكام هذا القانون أن تُعين مراجع حسابات خارجياً أو أكثر حسب الأحوال، إذا تجاوز رأس مالها المقدّر الذي يحدده قرار من الأمين المختص، كما يجب أن تكون مراجع الحسابات الخارجي من الأشخاص المرخص لهم بممارسة هذه المهنة، ويعتبر التقرير الصادر عن مراجع الحسابات الخارجي وكذلك الميزانية والحسابات الختامية المراجعة من قبله صحيحاً وحجة أمام الغير إلى أن يثبت العكس.	Any company organized under provisions of this law <u>should</u> nominate an external auditor or more, as per the cases, if it exceeded its estimated capital to be fixed by a resolution of the concerned secretary. The external auditor also <u>must</u> be amongst the persons authorized to practice such profession. The report to be issued by the external auditor as well as the balance sheet and the final accounts audited by him <u>shall be</u> considered correct and a pretext before others unless the contrary is confirmed. <sup>147</sup>

#### Example 55 taken from Article (5) of Law No (6) of 2004

المادة الخامسة	Article (5)
تقسم السلع والخدمات لأغراض مزاولة عمل	The commodities and services <u>shall be</u>

<sup>147</sup>See Appendices Text39

<p>الوكالة التجارية الى فئات سلعية وخدمية متجانسة يؤذن للشخص بممارسة النشاط في فئة واحدة منها على الأكثر</p> <p>ويجوز للجنة أن تأذن لبعض الأشخاص الاعتبارية بممارسة أكثر من فئة واحدة وذلك في الحالات التي تراها لازمة أو ضرورية لعمل الوكالة التجارية.<sup>148</sup></p>	<p>divided for the purposes for performing Trade Agency activity into homogeneous/ consistent commodity and service categories permitted for the person to perform the activity in one category thereof as maximum.</p> <p>The committee <u>may permit</u> certain artificial bodies to perform more than one category in the cases deemed necessary for the work of Trade Agency.<sup>149</sup></p>
---	--

**Example 56 taken from (8) of Law No (23) of 2010**

<p>المادة ( 8 )</p> <p>ممارسة النشاط التجاري لحساب الغير</p> <p>1. يجوز للولي أو الوصي أو القيم أن يمارس التجارة لحساب القاصرين ومن في حكمهم، وذلك بإذن من المحكمة الابتدائية التي يقع النشاط التجاري في نطاق اختصاصها.</p> <p>2. وفي هذه الحالة يجوز شهر افلاس القاصر أو من في حكمه دون أن تطبق في شأنهم التبعات الجنائية لشهر الإفلاس<sup>150</sup></p>	<p><u>Article 8</u></p> <p><u>Practicing Commercial Activity to Others Account</u></p> <p>1.The guardian or the custodian or the curator may practice commerce to the minors or alike account under a permission of the court of the First Instance which the commercial activity falls under its jurisdiction.</p> <p>2.In this case, the bankruptcy of the minor or alike <u>may</u> be declared, <u>without</u> applying against them the criminal consequences of the bankruptcy declaration<sup>151</sup>.</p>
---	---

<sup>148</sup>See Appendices Text5, Text4

<sup>149</sup>See Appendices Text 4, Text5,Text6,Text7,Text8, Text11, Text18, Text19, Text20, Text25, Text26, Text27, Text28, Text30, Text34, Text38, Text40 and Text42.

<sup>150</sup>See Appendices Text4,

<sup>151</sup>See Appendices Text36

Example 54 above expresses necessity and obligation twice by introducing the lexical item “يجب” (yajib) and “يعتبر” (yu‘tabar). First, the ST utilizes the lexical terms “يجب” (yajib) and “يعتبر” (yu‘tabar) which can equally express obligation and necessity in its active form. English, by contrast, uses “should” plus the verb “nominate” to express the meaning of the Arabic “يجب أن يعين” (yajib an yu‘ayyan). In my opinion, the translator did not succeed in expressing the meaning of “يجب” (yajib) by incorrectly using “should” instead of “shall” which originally signifies obligation. The second lexical item “يعتبر” (yu‘tabar) is correctly grasped by the translator when he opts for the term ‘shall’ plus the passive form of “consider”. Therefore, the obligatory meaning is wrongly interpreted in the first part; however, it is correctly transferred in the second one. In Example 54, the permission is clearly expressed by “تأذن” (ta’dhan) in the Arabic text preceded by the particle “يجوز” (yajūz). The translator seems not to succeed in expressing the Arabic meaning by introducing neither “shall” nor “may” to the verb “permit”. However, he achieved the highest degree of adequacy in his translation of “تقسم” (tuqassam) in its passive form into “shall be divided”, expressing the highest degree of obligation. In Example 55, the Arabic lexical verb “يجوز” (yajūz) is used as meaning “to be possible”. It grants the legal subject referred to in the sentence freedom of conduct to perform or not perform a certain action (Crabbe, 1998: 78). Here, my suggested translation is as follows: “The commodities and services shall be divided for the purposes for performing Trade Agency activities into homogeneous categories and a person shall be permitted to perform such activities in one category only. However, the committee may permit certain legal persons to perform activities in more than one category in the cases deemed necessary for the work of Trade Agency”.

The English TT, in Example 56, used “may” to express the exact meaning of “يجوز” (yajūz) which in my opinion conveyed the intended meaning. Moreover, the translator seems to fail to express the obligation in “دون أن تطبق” (dūna an tuṭabbaq) which is translated literally as “without applying them”. The literal

translation does not express the Arabic meaning, which refers to the fact that the “declaration” shall not have the criminal consequences. Literal translation in this example may distort the intended meaning of the modal concept and may mislead the English reader. Also, the meaning of “shall” is not conveyed which is essential in legal text. It can be suggested as “In this case, the bankruptcy of the minor or alike may be declared, but such a declaration shall not have the criminal consequences of a bankruptcy declaration” (my translation”. More examples of the verb “يطبق” (yuṭabbaq) can be found in examples 57 and 58 below:

**Example 57 taken from Article (2) of Law No (23) of 2010**

مادة (2)	<u>Article 2</u>
<p>مدى تطبيق القانون المدني</p> <p><u>تطبق</u> على الأنشطة الاقتصادية أحكام القانون المدني، فيما لم يرد بشأنه نص في هذا القانون.</p> <p>على أن <u>تطبق</u> هذه الأحكام لا يكون إلا بقدر إتفاقها مع المبادئ العامة في هذا القانون.</p>	<p><u>Application of Civil Law</u></p> <p>The provisions of the Civil Law <u>shall</u> be <u>applied</u> to the economic activities which are not provided for in this Law, provided that such provisions <u>shall</u> be <u>applied</u> in as much as their correspondence with General Principles in this Law.<sup>152</sup></p>

**Example 58 taken from Article (3) of Law No (23) of 2010**

مادة (3)	Article 3
<p>تطبيق السوابق القضائية ومبادئ العدالة</p> <p>إذا لم يوجد حكم تشريعي يمكن تطبيقه <u>فللقاضي</u> أن يسترشد بالسوابق القضائية وبمقتضيات الإنصاف</p>	<p><u>Application of Precedents and Principles of Justice</u></p> <p>If there is no applicable legislative provision, the judge <u>shall</u> have <u>the right</u> to be guided by the precedents,</p>

<sup>152</sup> See Appendices Text36

والاستقامة التجارية	equity requirements and commercial integrity. <sup>153</sup>
---------------------	--

**Example 59 taken from Article (5) of Law No (23) of 2010**

مادة (5)	Article 5
تعريف مزاول النشاط التجاري	Definition for Practicing Commercial Activity
يعتبر مزاولاً للنشاط التجاري كل من باشر أعمالاً تجارية، واتخذها حرفة معتادة له، وتطبق بشأن النشاط الأسري الأحكام المنظمة لشركة المحاصة.	Anyone who starts commercial works and takes thereof as his usual profession <u>shall be</u> considered as a commercial activity practitioner. As regards the family activity, the provisions of organizing a particular partnership <u>shall be applied</u> . <sup>154</sup>

**Example 60 taken from Article (32) of Law No. (23) of 2010**

مادة (32)	<u>Article 32</u>
انتهاء مدة الشركة	<u>Expiry of Company Duration</u>
تتحل الشركة إذا انتهت المدة المحددة لها، إلا إذا قام الشركاء بتمديد أجل الشركة حسب بنود العقد أو النظام الأساسي قبل إنتهاء تلك المدة، مالم ينص القانون على خلاف ذلك.	The company <u>shall</u> be dissolved on expiry of its fixed duration unless the partners extended thereof as per terms of the memorandum or articles of association prior to expiry of that duration, unless the law states otherwise. <sup>155</sup>

In Example 57, the obligation is clearly realised twice by using the verb “تطبق” (tuṭabbaq). Here one can detect that the meaning expressed by the use of “shall”

<sup>153</sup> See Appendices Text36

<sup>154</sup> See Appendices Text36

<sup>155</sup> See Appendices Text41



plus passive form of the lexical verb “apply” is an arrangement whereby all the provisions of law will be acted upon. This explains the reason for transferring the passive form of verb “تطبق” (tuṭabbaq).into the TT to express the same meaning. In Example 57, the ST producer is clearly denoting permission to the judge by using the connector “ف” and the particle “لـ” prefixed to the noun referring to “القاضي” (alqāḍī). The Arabic connector “ف” could be replaced by the lexical verb “يجوز” (yajūz), or “يمكن” (yumkin) prefixed to the particle “لـ”. The draftsman preferred to use “ف” followed by “القاضي” (qāḍī) to avoid any ambiguity. The translator feels it is necessary to account for the sense of “right” employed in the SL lexical verb “يحق” which is omitted and replaced with the proposition “لـ” but still gives the same meaning in Arabic. Therefore, the translator used the phrase “have the right” preceded by “shall” to express the right given to the judge. In doing so the translator, in my opinion, has reached the optimal degree of adequacy in the translation. This example serves as a typical illustration for the realization of modality in English.

In the above extract, Example 58, the SL text exhibits a model concept of “obligation” by means of which the company is dissolved on the expiry date of the agreement unless the law states otherwise. The SL realizes this concept by the lexical verb “تتحل” (tanḥall) followed by the noun “الشركة” (al-sharika). The same concept in TL is realized by the deontic modal “shall” followed by the verb to be, which is complemented by a passive carrying the sense of dissolving the contract of the company.

### 6.3.3 Must

The Arabic verb “يجب” (yajib) sometimes causes confusion to the legal translator since it could mean either “shall” if it signifies something imperative or mandatory, or “must” where there is no duty or obligation imposed on the subject but an action must be carried out (Sabra, 2005). Consider the following

examples:

**Example 61 taken from Article (2) Libyan Resolution No. 136 2004**

قاضي لا تقل درجته عن مستشار محكمة استئناف رئيس -----	A judge whose grade is not less than Counsellor in the Appeal Court ---- Chairman <sup>156</sup>
---	--

**Example 62 taken from Article (4) The Executive Regulation for Law No (6) of 2004**

تتميز منتجاته أو خدماته بالدقة والإتقان	...whose products or services are distinguished by good quality and perfection.. <sup>157</sup>
---	---

As it can be seen from Example 61, the modal concept is expressed in Arabic by using the Arabic lexical item “لا تقل” (la taqill) which literally rendered as “not less”. The Arabic text clearly means “The standing of the judge must not be less than judge in the Appeal Court”, but the translator does not realise the concept of modality in the English text. This can cause a translation loss and ambiguity. In Example 62, the necessity in the Arabic text is delivered by the term “تتميز” (tatamayyaz) to mean that the products “must be” distinguished by good quality. Again the translator fails to express the modality concept in the English text by opting for too literal a translation method.

**Example 63 Article (31) of Law No (23) of 2010**

مادة (31)	<u>Article (31)</u>
نقصان أصول الشركة	<u>Decrease in Company Assets</u>
إذا نقصت قيمة أصول الشركة عن أقل من نصف رأس مالها نتيجة للخسائر المثبتة في قوائمها	If the value of the company assets is decreased by less than half of its

<sup>156</sup>See Appendices Text 10

<sup>157</sup>See Appendices Text 8

المالية، <u>يجب</u> على المدير أو المديرين أن يدعوا الشركاء للاجتماع بغرض حل الشركة، أو مواصلة نشاطها بعد إعادة رأس المال إلى مايزيد على النصف على الأقل.	capital due to the losses confirmed in its financial statements, the manager or the manager <u>must</u> convene partners meeting for dissolving the company or continuing its activity after reinstating the capital to at least more than half. <sup>158</sup>
---	---

#### Example 64 taken from Article (16) of Law No (23) of 2010

مادة (16) بيانات مستندات الشركة <u>يجب</u> أن يُذكر في مستندات الشركة ومراسلاتها مركز الشركة الرئيسي، ومكتب السجل التجاري المقيدة به، <u>ويجب</u> بالنسبة للشركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسؤولية المحدودة أن يُذكر زيادةً على ماتقدم رأس المال المكتتب فيه والمدفوع منه فعلاً. <sup>159</sup>	The company head office, the Commercial Register Office in which it is registered, registration number <u>must</u> be laid-down in documents and correspondence of the company. As regards Joint-Stock Companies, companies limited by shares and limited liability companies there should be laid-down, in addition to the above the subscribed capital and the actually paid thereof. <sup>160</sup>
---	--

#### Example 65 taken from Article (18) of Law No (23) of 2010

مادة (18) <u>يجب</u> على كل شركة منظمة بأحكام هذا القانون أن تُعين مراجع حسابات خارجياً أو أكثر حسب الأحوال، إذا تجاوز رأس مالها المقدّر الذي يحدده قرار من الأمين المختص، كما <u>يجب</u> أن تكون مراجع الحسابات الخارجي من الأشخاص المرخص لهم بممارسة هذه المهنة، <u>ويعتبر</u> التقرير الصادر عن مراجع الحسابات الخارجي وكذلك الميزانية والحسابات الختامية المراجعة من قبله	Article (18) Any company organized under provisions of this law <u>should</u> nominate an external auditor or more, as per the cases, if it exceeded its estimated capital to be fixed by a resolution of the concerned secretary. The external auditor also <u>must</u> be amongst the persons authorized to practice such profession. The report to be issued by
--	---

<sup>158</sup>See Appendices Text41

<sup>159</sup>See Appendices Text4, Text26, Text28, Text33, Text38, Text39, Text40, Text43, Text44 and Text46.

<sup>160</sup>See Appendices Text 38

صحيحاً وحجة أمام الغير إلى أن يثبت العكس.	the external auditor as well as the balance sheet and the final accounts audited by him <u>shall be</u> considered correct and a pretext before others unless the contrary is confirmed. <sup>161</sup>
---	---

In Examples 63-64-65, it can be noticed that the modal concept of forming rules is rendered as the equivalent modal “must”. It must be stated that in this example “necessity” is enhanced by a conditional clause; if the value of the company assets is decreased by less than half of its capital. The translator has succeeded in transferring the meaning of the modal “must” correctly.

#### 6.3.4 May

The lexical verb “يجوز” (yajūz) is usually translated into the modal verb “may” in English. The lexical term “may” is used to grant the legal subject referred to in the sentence freedom of conduct to perform or not to perform a certain action. It follows from this that if the subject does not perform the action this does not give a legal opponent the right to raise a case against him (Crabbe, 1998:78). The following examples illustrate the translation of “يجوز” into English:

#### Example 66 taken from Article (7) of Law No (23) of 2010

السن القانوني لمزاولة النشاط التجاري يجوز لمن بلغت سنه ثماني عشرة سنة كاملة أن يقوم بمزاولة النشاط التجاري مالم يتطلب تشريع آخر أهلية أعلى. <sup>162</sup>	Anyone who attained activity in full eighteen years of age <u>may</u> practice commercial activity unless another legislation requires higher qualification. <sup>163</sup>
---	---

<sup>161</sup>See Appendices Text 39

<sup>162</sup>See Appendices Text4, Text5, Text9, Text10, Text11, Text13, Text18, Text25, Text26, Text29, Text36, Text37, Text39, Text42, Text44, Text46, Text48 and Text52.

<sup>163</sup>See Appendices Text 36

### Example 67 taken from Article (23) of Law No (23) of 2010

مادة 23	Article 23
يجوز للأمين المختص أن يصدر قراراً بالنماذج الاسترشادية لعقود التأسيس، والأنظمة الأساسية للشركات والتشريكات المنظمة لها.	The concerned secretary <u>may</u> issue a resolution on guided forms of memorandums and articles of associations of companies and partnerships. <sup>164</sup>

### Example 68 taken from Article (19) of Law No (23) of 2010

لا يجوز طرد الشريك من الشركة إلا في الحالات التي يبيح فيها القانون ذلك، أو في الحالات المنصوص في العقد، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقه.	The partner <u>may not</u> be dismissed from the company unless in cases allowable by the law or in cases provided for in the memorandum or the Articles of Association. The partner obligation also <u>may not</u> be emphasized unless with him consent. <sup>165</sup>
---	---

In Example 66 above, the SL text producer clearly states a modal concept of “permission” for anyone who attained 18 years to practice commercial activities by the Arabic lexical verb “يجوز” (yajūz) followed by the particle “لـ” attached to the pronoun. The intended meaning is to give legal permission to practice an action, and this is correctly grasped by the translator. At the same place another similar example is found in Example 67, where “يجوز” (yajūz) is rendered by the same technique as “may”. Other lexical items can be used by the translator to express the same meaning of modality such as “has the right to” or “able to”. The translator however, seems to be satisfied with the modal verb “may”, which in my opinion expresses the intended meaning. On the other hand, “لا يجوز” (lā yajūz) is used to take away the discretionary power from the subject of the

<sup>164</sup> See Appendices Text39

<sup>165</sup> See Appendices Text39

sentence. In other words, it means that the subject is not permitted to perform the action that is referred to. Therefore, it prohibits the subject from carrying out the action, as in Example 68. The translator used “may not” in both cases which in my opinion transferred successfully the correct meaning of the Arabic term “لايجوز” (lā yajūz).

## **6.4 Textual Features**

As discussed in chapter five theoretically and some examples were given to illustrate such features, in this part we will analyse practically professionally translated text from Arabic into English with reference to Libyan commercial law:

### **6.4.1 Lexical Cohesion**

Another feature of both legal Arabic and English texts that may raise a problem in translation is lexical cohesion. Lexical cohesion refers to the “cohesive effect achieved by the selection of vocabulary”. Lexical cohesion is divided into: i) reiteration and ii) collocation (Halliday and Hassan, 1976: 274). Reiteration covers either the repetition of the same lexical items, superordinate or a generally related word. Collocation, however, is where a pair of words occurs within the same lexical category (ibid: 286). According to Dickins, Hervey and Higgins ((2002: 100), repetition in Arabic may be classified as: “pattern repetition”, “suffix repetition”, “root repetition” and “lexical repetition”. The root system in Arabic can generate various derivations; however, “English avoids this type of repetition” (ibid: 103).

This section will focus on root repetition and lexical repetition as they are the most common forms of repetition in Arabic (ibid: 108).

Consider the examples below:

**Example 69 taken from Documents required for the registration in the commercial register**

<p><u>ملاحظات عامة :-</u></p> <p>-تتولى الإدارة دراسة المستندات والبت فيها وفي حالة الموافقة وصدور قرار بالإلإن بمزاولة النشاط يجب على الوكيل وخلال شهر من تاريخ صدور الإذن تقديم المستندات الآتية:-</p> <p>1- عقد <u>الوكالة</u> المبرم بين <u>الوكيل</u> و<u>الموكل</u> مبرم مباشرة مع الشركة أو المحل المنتج للسلعة أو المقدم للخدمة محل عقد <u>الوكالة</u> متضمناً تحديد نوع <u>الوكالة</u> التجارية ومدتها ومجال النشاط ونطاقه والمقابل المالي لعمل <u>الوكيل</u>.<sup>166</sup></p>	<p>General Notice:-</p> <p>The department shall examine the documents and decides therein. In case of approval by this department and issuance of decision permitting the carrying on of this activity, the agent shall, within one month from the date of decision, submit the following documents:</p> <p>Contract of <u>agency</u> concluded between the <u>principal</u> and the <u>agent</u> to be signed directly with the company or plant/factory producing or rendering the service, subject of <u>Agency</u> Contract and shall specify the type of commercial agency, its duration, scope of activity, area and remuneration against the <u>agent</u>'s services.<sup>167</sup></p>
---	--

**Example 70 taken from Article (9) of Law No (6) of 2004**

<p>مادة (9)</p> <p>مزاولة النساء للنشاط التجاري</p> <p>1. ينظم أهلية النساء لمزاولة النشاط التجاري قانون أحوالهن الشخصية.</p> <p>2. يفترض في <u>الزوجة</u> الأجنبية التي تحترف مزاولة النشاط الاقتصادي في الجماهيرية أنها تمارس بإذن زوجها، فإذا كان قانون الأحوال الشخصية للزوجين يجيز للزوج الاعتراض على احترام <u>زوجته</u> التجارة، أو سحب <u>إذنه</u> السابق،</p>	<p><u>Article 9</u></p> <p>1. The women's qualification for practicing commercial activity shall be organized by their personal status law.</p> <p>2. The foreign <u>wife</u> who engages in practicing economic activity in Jamahiriya is supposed to practice thereof under permission of the <u>husband</u>. If the personal status law of</p>
--	---

<sup>166</sup> For more examples of lexical repetition, see Appendices Text4, Text5, Text6, Text8, Text9, Text10, Text11, Text12, Text18, Text19, Text20, Text22, Text24, Text26, Text27, Text28, Text36, Text38, Text40 and Text42.

<sup>167</sup> See Appendices Text 23

<p>وجب قيد ذلك في السجل التجاري، ونشره حسب الطرق القانونية<sup>168</sup>.</p> <p>3. ولا ينتج الاعتراض أو سحب الإذن أي أثر إلا من تاريخ نشره.</p> <p>4. ولا يؤثر الاعتراض أو سحب الإذن في الحقوق التي اكتسبها الغير.</p> <p>5. يفترض في الزوجة الأجنبية التاجرة أنها تزوجت طبقاً لنظام انفصال الأموال إلا إذا كانت قد قامت بشهر المشاركة المالية بعقد زواجها.</p>	<p>the couple allows the <u>husband</u> to protest against engagement of <u>his wife</u> in commerce or withdrawal of his previous <u>permission</u>, this must be written down in the Commercial Register and published as per legal methods.<sup>169</sup></p> <p>3. Protestation or withdrawal of the permission shall not result in any effect except from the date of its publication</p> <p>4. Protestation or withdrawal of the permission shall not affect the rights gained by the others.</p> <p>5. The merchant foreign wife is supposed to have been married according to the system of separation of the funds unless she has been declared the financial agreement in her marriage contract.<sup>170</sup></p>
--	--

In Example 68, the morphological root for the Arabic words “وكالة” (wakāla), “وكيل” (wakīl), and “موكل” (muwakkil) is “وكل” (wakala). Therefore, there is a partial repetition creating a sort of lexical cohesion, which is not achieved in the TT due to the lack of a comparable root system in English (TL). It can be noticed in the TT that it is less lexically cohesive. That is probably because the translator has adopted the translation by omission technique; therefore, the repetition of lexical items in TT is reduced. In this example, the translator succeeded in conveying the meaning of the Arabic ST. In Example 69, the ST implicitly has a few pronouns refer back to the nouns “زوج” (zawj-husband) and “زوجة” (zawja-wife) as in “زوجها” (zawjaha-her husband), “زوجته” (zawjatah-his wife), “إذنه” (idhni-his permission). So the translators may find it difficult to

<sup>168</sup>Article (9) of Law No. (6) of (2004) for Organizing Trade Agency Activities

<sup>169</sup> Suggested translation: ‘If the personal status law of the couple allows the husband to protest against engagement of his wife in commerce or he withdraws his previous permission, this must be written down in the Commercial Register and published.’<sup>169</sup>

<sup>170</sup>See Appendices Text37



preserve the same meaning of pronouns even if they adopt literal translation. It can be noticed that the translator failed to transfer the pronoun cohesion into English in “سحب إذنه السابق” (saḥab idhnah al-sābiq-withdrawal of his previous permission). The pronoun “هو” (huwa-he) is attached to the Arabic verb “إذن” (idhin) which is not translated in the TT.

#### Example 71 taken from Article (9) of Law No (23) of 2010

ولا ينتج الاعتراض أو سحب الإذن أي تأثير إلا من تاريخ نشره ولا يؤثر الاعتراض أو سحب الإذن في الحقوق التي اكتسبها الغير <sup>171</sup>	Protestation or withdrawal of the permission shall not result in any effect except <u>from the date of its publication</u> protestation or withdrawal of <u>the</u> permission shall not affect the rights gained by others. <sup>172</sup>
---	---

#### Example 72 taken from Article (2) of Law No (23) of 2010

مادة (2) مدى تطبيق القانون المدني تطبق على الأنشطة الاقتصادية أحكام القانون المدني، فيما لم يرد بشأنه نص في هذا القانون. على أن تطبيق هذه الأحكام لا يكون إلا بقدر إتفاقها مع المبادئ العامة في هذا القانون <sup>173</sup>	<u>Article 2</u> <u>Application of Civil Law</u> The provisions of the Civil Law shall be applied to the economic activities which are not provided for in this Law, provided that such provisions shall be applied in as much as their correspondence with General Principles in this Law. <sup>174</sup>
--	--

#### Example 73 Article (10) of Law No (6) of 2004

المادة العاشرة يحظر التعاقد مع الاجانب سواء كانوا اشخاصا طبيعيين أو اعتباريين بشأن توريد السلع أو الخدمات ما لم يكن لهم وكلاء تجاريين معتمدين	Article (10) It is prohibited to sign contracts with foreigners, whether natural or artificial persons, for supply of commodities or services, unless they have authorised
--	---

<sup>171</sup> Article (9) of Law No. (23) of (2010) Regarding Commercial Activities.

<sup>172</sup> See Appendices Text 26

<sup>173</sup> Article (2) of Law No. (23) of 2010 Regarding Commercial Activities.

<sup>174</sup> See Appendices Text 36

<p>وفقاً لأحكام هذا القانون.</p> <p>ويستثنى من ذلك السلع والخدمات التي يتم تحديدها من قبل اللجنة الشعبية العامة للاقتصاد والتجارة.<sup>175</sup></p>	<p>trade agents under the provisions of <u>this</u> law. The commodities and services specified by the General People's Committee for Economy and Commerce shall be excluded.<sup>176</sup></p>
--	---

**Example 74 taken from Article (19) of Law No (23) of 2010**

<p>مادة (19)</p> <p>لا يجوز طرد الشريك من الشركة إلا في الحالات التي يبيح فيها القانون ذلك، أو في الحالات المنصوص في العقد، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقة<sup>177</sup>.</p>	<p>Article (19)</p> <p>The partner may not be dismissed from the company unless in cases allowable by the law or in cases provided for in the memorandum or the Articles of Association. The partner obligation also may not be emphasized unless with him consent.<sup>178</sup></p>
---	---

**Example 75 taken from Article (50) of Law No (23) of 2010**

<p>المادة 50</p> <p>شطب الشركة</p> <p>يجب على المصقّي القيام بشطب قيد الشركة من السجل التجاري، ونشر ذلك وفقاً للقانون.</p>	<p><u>Article 50</u></p> <p><u>Striking the Company off the Commercial Register</u></p> <p>The liquidator must strike the company off the Commercial Register and publish the same according to the Law.<sup>179</sup></p>
--	--

In Examples 71, 72, 73, 74, and 75 the cohesion that the draftsman created in the ST by using the demonstratives to refer back to the noun is not achieved in the TT. To avoid ambiguity, a demonstrative should be added in the TT in Example 71 for “من تاريخ نشره” (min tārikh nashrih-from the date of its

<sup>175</sup> Article (10) of Law No. (6) of (2004) for Organizing Trade Agency Activities

<sup>176</sup> See Appendices Text 5

<sup>177</sup> Article (19) of Law No. (23) of 2010 Regarding Commercial Activities.

<sup>178</sup> See Appendices Text39

<sup>179</sup> See Appendices Text44

publication of this protestation) and “ولا يؤثر” (walā yu’aththir-this shall not affect”. The demonstrative “this” can clarify the ambiguity that can be caused when translating the attached pronoun in the ST “نشره” (nashrih-its publication) and “ولا يؤثر” (walā yu’aththir) which the translator did not manage to achieve. In Examples 72 and 73, the demonstrative “هذا” (hādhā-this) is transferred literally into “هذا القانون” (hādhā al-qānūn) when the English text does not require “the” before “law” in this case. It can be translated as “General Principles in Law” and “the provisions of Law”. Here, it can be suggested to translate Example 72 as “The provisions of Civil Law shall be applied to the economic activities which are not provided for in Law, provided that such provisions shall be applied in as much as they correspond with General Principles in Law” (my translation). Moreover, in Example 73, the translator did not succeed in translating the Arabic demonstrative “ذلك” (dhālika) which refers back to a legal fact already mentioned in “dismiss”. The demonstrative “ذلك” (dhālika) is used in the ST to avoid lexical repetition. It can cause ambiguity when not translated. It can be suggested to translate it as “It is prohibited to sign contracts with foreigners, for supply of commodities or services, unless they have been authorised as trade agents under the provisions of Libyan law. The commodities and services specified by the General People’s Committee for Economy and Commerce shall be excluded” (my translation). In Example 74, the translator either used the technique of translating by omission or did not realise the need to translate the demonstrative “ذلك” (dhālika) in the ST. The demonstrative works as a cohesive device to refer back to “strike”. However, it is usually avoided in legal language as it may cause confusion, and the noun is usually repeated instead. Here is a suggested translation can be as: “The partner may not be dismissed from the company unless this is allowable by law or in cases provided for in a memorandum of understanding or provided for in the Articles of Association. The partner obligation also may not be emphasized unless with him consent” (my translation). Similarly, the translator added the lexical item

“the same” which does not exist in the ST which obviously causes ambiguity, and instead it can be translated as “The liquidator must strike the company off the Commercial Register and publish this action according to the Law” (my translation”. By adding “this action”, it clarifies the intended meaning of the ST.

#### Example 76 Article (17) Libyan Resolution No (136) 2004

<p>تُدعى لجنة التظلمات المنصوص عليها في المادة (15) من هذه اللائحة، إلى الاجتماع بدعوة من مؤسسها، وتوجه الدعوة إلى الأعضاء، مُبيناً بها زمان الاجتماع ومكانه وذلك قبل التاريخ المحدد له بمدة اسبوع على الأقل، ويرفق بالدعوة جدول الأعمال المعروض وصور من التظلمات، والقرارات المتظلم منها، ويكون قرار هذه اللجنة في شأن التظلم نهائياً وملزماً.<sup>180</sup></p>	<p>The secretary of Complaint/Appeal Committee specified in Article (15) hereof shall be invited for <u>meeting</u> by its Chairman. The invitation shall be sent to the members, indicating the time and place of <u>meeting</u> one week at least before the date specified for the <u>meeting</u>, enclosing therewith the agenda and copies of the complaints/appeals and the appealed decisions. The decisions of this committee regarding the complaint/appeal shall be final &amp; binding.<sup>181</sup></p>
---	--

In Example 75, the draftsman created cohesion by repetition. The lexical item “اجتماع” (ijtimāʿ) is repeated two times in the ST; however, the translator repeated “meeting” three times. The repetition of the lexical item “meeting” in “before the date specified for the meeting” is unnecessary and not mentioned in the ST.

It can be concluded that the analysis of the translated legal texts from Arabic into English in this chapter has focused mainly on Libyan commercial legal texts in order to answer the following research question:<sup>182</sup>

<sup>180</sup> Article (17) Libyan Resolution No. 136 (2004) for issuing the Executive Regulation for No. (6) of (2004) for organizing Trade Agency Activities

<sup>181</sup> See Appendices Text11

<sup>182</sup> see Chapter One

How do Arabic and English documents of law differ and agree in terms of lexical, syntactic and textual characteristics, especially in terms of the translation of Libyan law into English?

The findings of the translation analysis above can be summarised as follows:

1- lexical features can be illustrated as follows:

- a) Libyan law tends to use unique lexical items and phrases which can be a challenge for the translator since they make no sense in English if translated literally. Such unique lexical items can be political, economic or cultural. For example: “اللجنة الشعبية العامة” (al-lajna al-sha‘biyya al-‘āmmā) which literally means “General People’s Committee”. And also “مؤتمر الشعب العام” (mu’tamar al-sha‘b al-‘āmm) meaning “The General People’s Congress”.

The analysis showed that these unique lexical items could mislead the English reader if translated literally.

- b) Legal terms are divided into pure technical, semi-technical and general words used in legal texts. Some of these pure technical English terms originate from Latin or French. English also uses archaic terms such as “thereof”, “hereof”, “therein”, etc.
  - c) There seems no big difference between binomials in Arabic and English and they do not seem to cause a lot of confusion in translation. For example: “المنتجات أو خدمات” (al-muntajāt awal-khadamāt) was rendered as “products or services” and also “السلع أو المنتجات” (as-sila‘ awal-muntajāt) was translated as “goods or products”.
- 2- The analysis of the syntactic level above (see section 6.3) shows that there is a significant difference between legal Arabic and legal English that can be summarised as follows:

- a) Legal Arabic tends to use the present tense, whereas legal English uses “shall, may or must + VERB”.
  - b) The passive in legal Arabic is more dominant than in legal English. This is due the differences between the two languages.
- 3- The analysis of the textual features showed the following results:
- a) Both Arabic and English legal documents usually consist of four main parts; i) “ديباجة” (dībāja-Preamble), ii) “فاتحة” (fātiḥa-Initial/Article, iii) “مواد” (mawādd-Articles), and iv) “خاتمة” (khātima-Concluding Article).
  - b) Both Arabic and English use formal substitutes in legal language such as “المشار اليهم” (almushār ilayhim-the said).
  - c) Lexical repetition is common in both legal Arabic and legal English.

Now that we have presented a summary of the comparative analysis of the translated texts from Arabic into English in this chapter, the subject of our next chapter is the practical study of legal translation from Arabic into English in Libya. It tackles three aspects: first, the challenges encountered by legal translators; second, the evaluation of their practice; and third, the collaboration between legal translators and legal drafters.

## **Chapter Seven**

### **7. Survey Analysis**

#### **7.1 Introduction**

This chapter introduces the method and findings of the survey conducted in Libya and London. The main objective of this chapter is to find out first whether legal translators in Libya face any difficulties in translating legal texts from Arabic into English. The results may shed light on whether legal translators in Libya face challenges, which have an impact on their translation. This empirical study will also attempt to find out whether the English translation of Libyan texts meets the standards of the English reader.

This chapter adopts Nord's methodological steps in conducting a survey designed for legal translators and lawyers. Nord (1991a, 103) introduces precise methodological steps for investigating translational conventions. The first is the analysis of the TTs, since these reflect conformity to or deviation from existing norms; and here the need for a large number of samples is emphasised. This type of analysis was conducted in the previous chapter (Chapter 6). The second method is the study of available critical reviews of the TTs, which will indirectly reflect the normative expectations of the reviewers, and this will be sought in this chapter since the survey will provide a detailed feedback given by professional translators and legal drafters (ibid: 104).

Once again, this will be investigated through answering two surveys. First, the survey is answered by 15 legal translators who are based in Libya. The second part is the survey which answered by legal drafters who are based in London and cooperate with legal drafters in Tripoli as they are legal consultants of commercial companies in Tripoli. Nord suggests that such feedback helpstranslation studies with due regard to the validity of the method for collecting such responses (1991a: 105). Toury suggests that the use of surveys is "the most common way of studying aspects of translated texts(or, rather,

addressees' responses to them) with empirical methods consists in devising questionnaires and having groups of, subjects - hopefully big enough as well as controlled for their background - react to the texts by answering the questions" (1991: 52). Therefore, this experiment is designed to support the research question and hypothesis stated in Chapter One of this thesis and will be followed by a detailed analysis of the selected translated texts in the next chapter.

## **7.2 Controlling and Distributing the Survey**

The survey was conducted in the time range of 8 weeks between 01/11/2012 to 30/12/2012. The survey was distributed to two groups in Tripoli; professional translators and commercial lawyers in Tripoli. The professional translators were full time translators and free lancers. The total number of respondents was 30 divided between translators and lawyers. A lot of them were not available due to the unstable situation in Libya since February 2011.

## **7.3 Problems Faced During Completing Survey**

Two main problematic obstacles faced the researcher in distributing the surveys. First, as there was only one English law firm in Tripoli which opened its first branch in 2012 as the first law firm in Libya. The number of lawyers was limited; also, the situation in Libya was unstable due to the political instability which started in 2011. Moreover, travelling around Tripoli to meet freelance translators was also an obstacle as it was unsafe. Some of the respondents did not reply to the e-mails due to the fact that there was no internet service in some parts of Tripoli. Some respondents left the country for security reasons.



## 7.4 Survey Design

### 7.4.1 Part One: Survey Completed by Legal Translators:

The survey was designed for 15 legal translators working in Tripoli, Libya who were asked to answer 11 different questions regarding their qualifications and work experience and difficulties they encounter in the field of translation. Some of them worked in the private sector, some were government employees and the rest are freelancers. The questions provided covered various levels of problems that may face the translator when dealing with legal texts. These questions helped the researcher to identify such problems and answer the questions of whether lexical, syntactic and textual features of legal texts pose any difficulties to the Arabic-English translator. The questions covered the translators' qualifications including specialised legal translation courses, their experience, their level of difficulties in translating legal texts in general and commercial law in specific between Arabic and English, what tools translators use to deal with translation difficulties, and finally whether translators believe that collaborating with legal drafters is a good idea (Appendices Text 53).

## Findings

The following tables show the numbers of participants for each question:

### 1. Table 1 illustrates translators' qualifications including specialised legal translation courses:

Degree	No. of Translators	Percentage
BA	12	80%
MA	3	20%
PhD	0	0%
Specialised Courses	0	0%

Table 1

As shown above in Table 1, the majority of practitioners (80%) hold a BA degree in English. Only (20%) hold an MA. None of the participants holds a specialised degree in legal translation.

However, there seems to be no effect of qualification differences on the opinions of respondents to most questions (see Appendix Text 53). The reason that most translators hold a BA degree is because most universities offer an undergraduate degree in English but only one institute offers a master's degree. Most masters degree holders are academics and prefer to teach.

It can be shown in a pie-chart as follows:

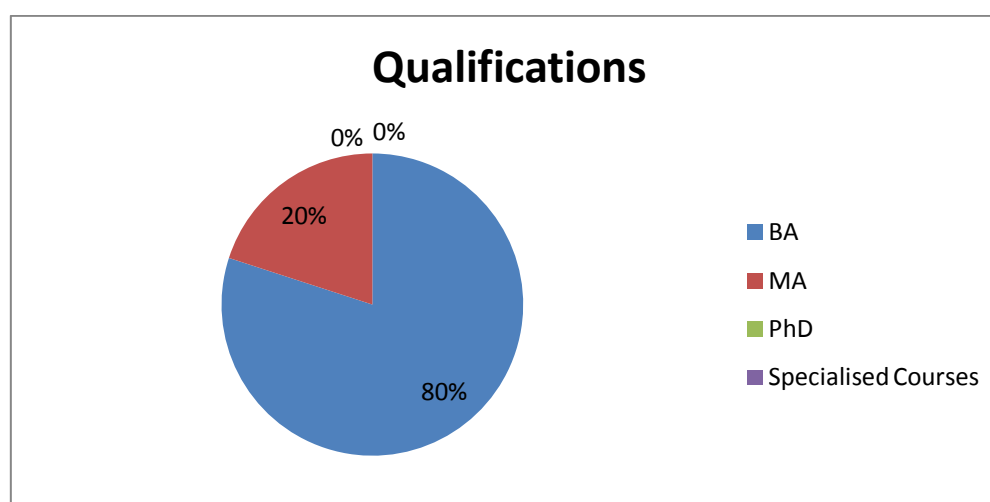


Figure 5

## 2. Table 2 illustrates years of experience:

No. of Years	No. of Translators	Percentage
+10 years	2	13%
5-9 years	4	27%
1-5 years	9	60%

Table 2

The table above (Table 2) shows the years of experience of Libyan translators. The majority of translators (60%) have 1-5 years of experience as legal translators. All translators lack legal training. Moreover, there seems to be no effect of work experience differences on responses to the rest of the survey

questions (see Appendix). This shows that most translators are in need of more experience and training. The lack of training institutions in Libya seems to affect the experience of translators. This must have an impact on translation quality.

It can be shown in a pie-chart as follows:

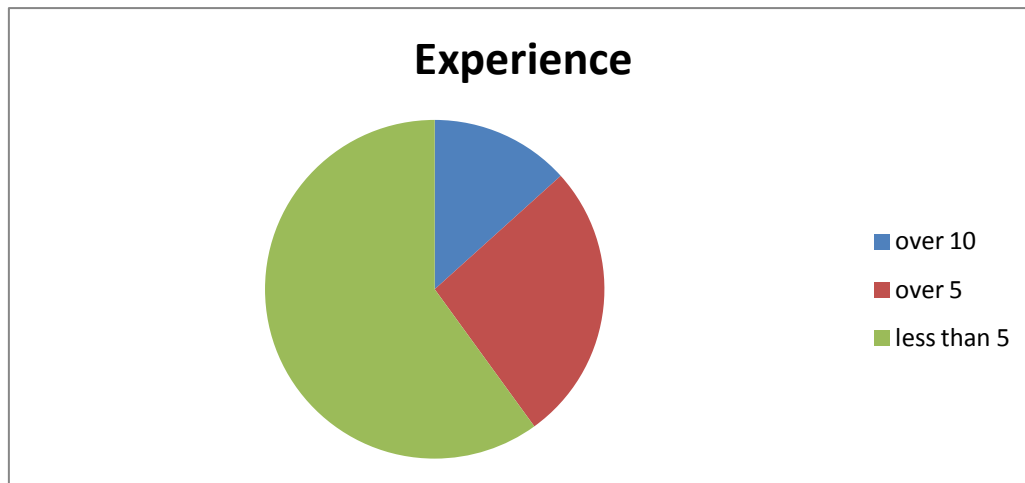


Figure 6

**3. Tables 3 and 4 illustrate levels of difficulty in the translation of legal texts from Arabic into English compared to the translation from English into Arabic:**

**a) Arabic into English**

Level of Difficulty	No. of Translators	Percentage
Very easy	11	73%
Average	4	27%
Difficult	0	0%

Table 3

The above responses can be illustrated in the following chart:

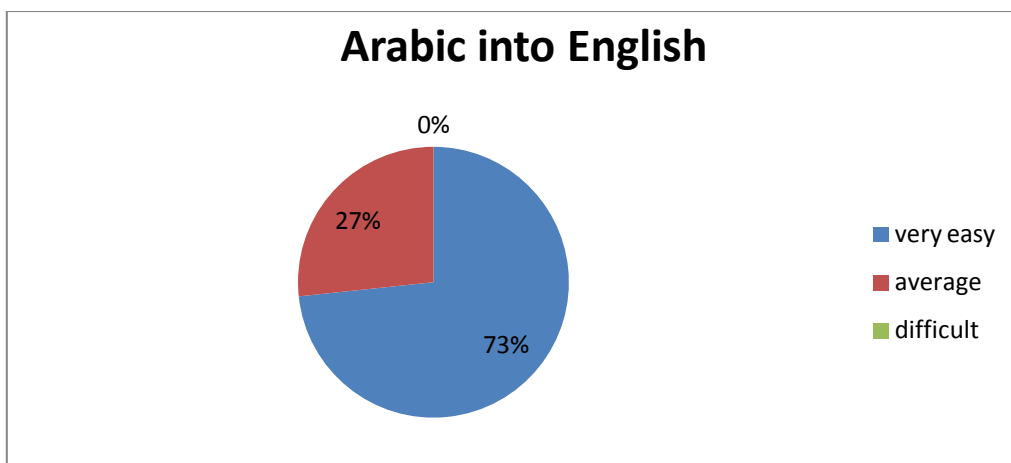


Figure 7

#### b) English into Arabic

Level of Difficulty	No. of Translators	Percentage
Very easy	9	64%
Average	5	36%
Difficult	0	0%

Table 4

The above data can be show in the chart below:

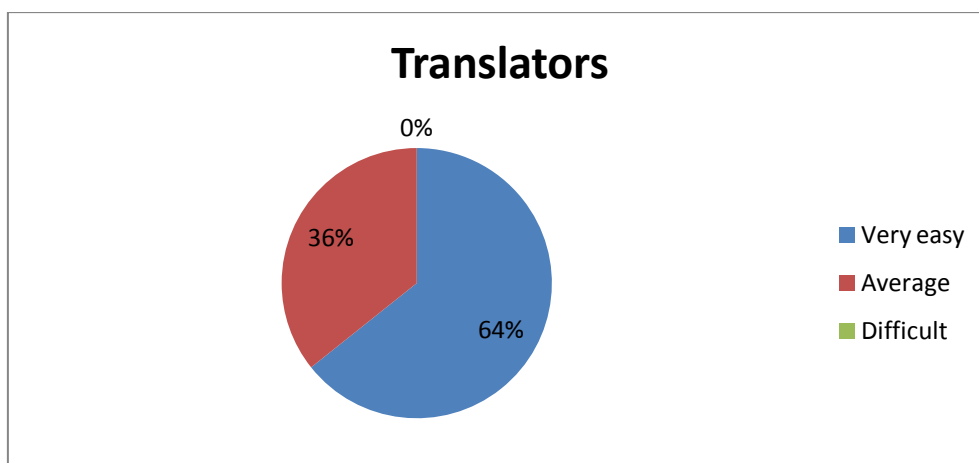


Figure 8

Table 3 above shows that 73% of translators find translating from Arabic into English easy; however, 27% of them find it average. Table 4 shows that 64% of translators regard translating from Arabic into English as easy; however, 36% find it “average” to translate into Arabic. The overall results show that the majority of translators.

Even though the majority of translators seem to have no major difficulties in translating legal text between Arabic and English, there are still a few issues in the quality of the translation from Arabic into English. This can be seen from the translations analysed in Chapter 6. The translation from Arabic into English must be harder for Libyan translators because all translators are native speakers of Arabic, and English is their second language. Moreover, Libyan students only start learning English when they are 12 or more, which is quite late to qualify as a good translator. In addition, translators lack translation qualifications since universities offer a degree in general English but they do not specialise in translation.

**4. Tables 5 and 6 illustrate levels of difficulty in translating commercial contracts and agreements from Arabic into English compared to doing so from English into Arabic:**

**a) Arabic into English**

Level of Difficulty	No. of Translators	Percentage
Very easy	8	53%
Average	6	40%
Difficult	0	0%
No answer	1	7%

Table 5

The following chart illustrates the above figures:

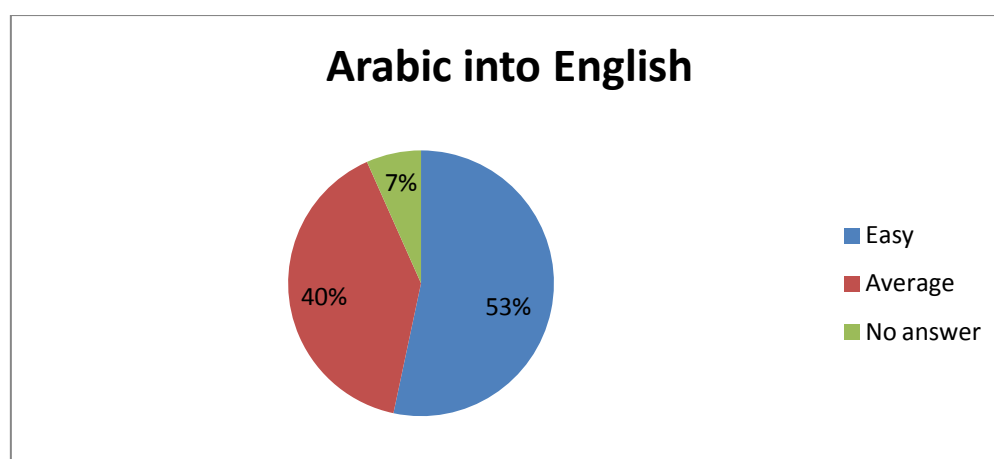


Figure 9

### b) English into Arabic

Level of Difficulty	No. of Translators	Percentage
Very easy	10	67%
Average	3	20%
Difficult	1	6%
No answer	0	0%

Table 6

It can be shown in a pie-chart as follows:

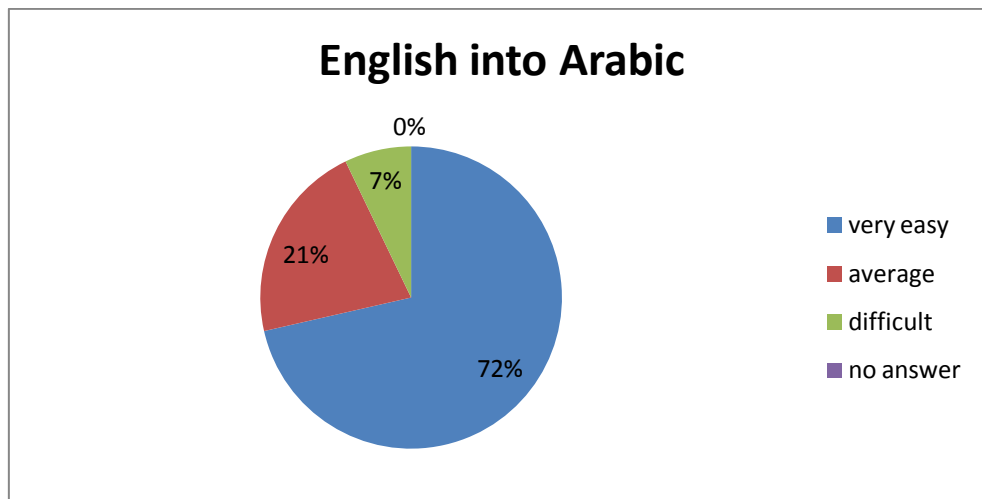


Figure 10

Table 5 above shows the level of difficulty in translating commercial contracts from Arabic into English. The figures above show that 53% of the translators do not seem to face any difficulties in translating commercial contracts into English. However, 40% of participants believe it is “average”. In Table 6, 72% of the respondents find no difficulties in translating commercial contracts into Arabic. This figure is higher than that for the number of translators who translate into English. This is probably because they find it easier to translate into their mother tongue, Arabic. As discussed in Tables 3-4, translators lack the

professional courses for training. They need professional training in both legal translation and legal courses in order to have a good legal background.

**5. Tables 7-11 illustrate the levels of the main difficulties in translating commercial contracts and agreements from Arabic into English:**

**a) Lexical Difficulties**

Level of Difficulty	No. of Translators	Percentage
1	4	27%
2	2	13%
3	2	13%
No answer	7	47%

Table 7

It can be shown in a pie-chart as follows:

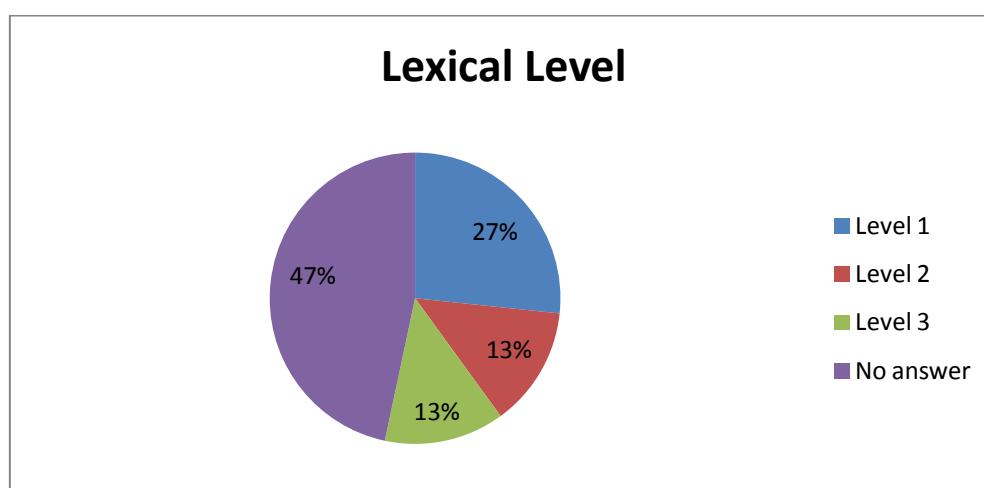


Figure 11

**b) Syntactic Difficulties**

Level of Difficulty	No. of Translators	Percentage
1	6	40%
3	1	7%
5	1	7%
No answer	7	46%

Table 8

It can be shown in a pie-chart as follows:

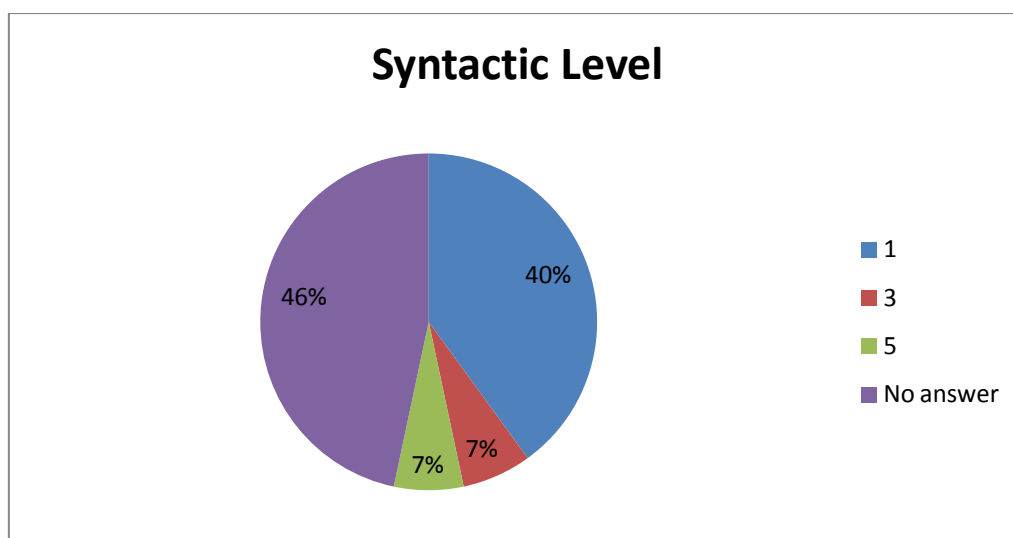


Figure 12

### c) Culture-specific legal terms

Level of Difficulty	No. of Translators	Percentage
1	4	27%
4	3	20%
No answer	8	33%

Table 9

It can be shown in a pie-chart as follows:

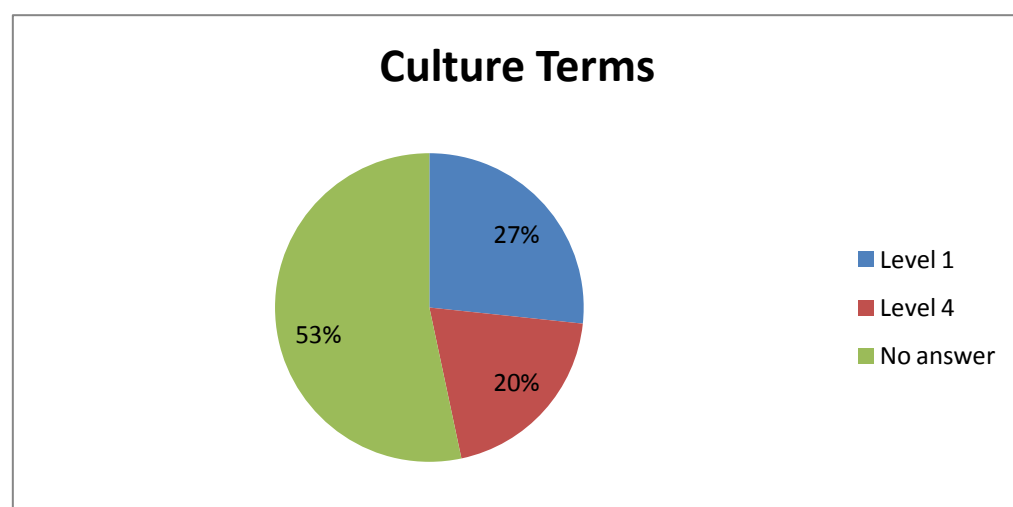


Figure 13



**d) Textual Difficulties**

Level of Difficulty	No. of Translators	Percentage
1	5	34%
4	2	13%
No answer	8	53%

Table 10

The pie-chart below illustrates the above figures as follows:

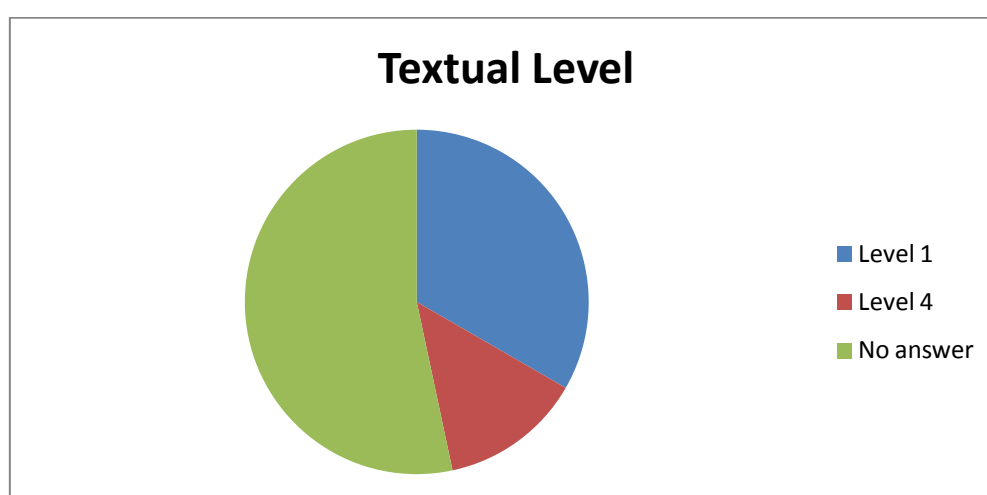


Figure 14

**e) Sentence Structure**

Level of Difficulty	No. of Translators	Percentage
1	6	40%
2	2	13%
No answer	7	47%

Table 11

The pie-chart below illustrates the above figures as follows:

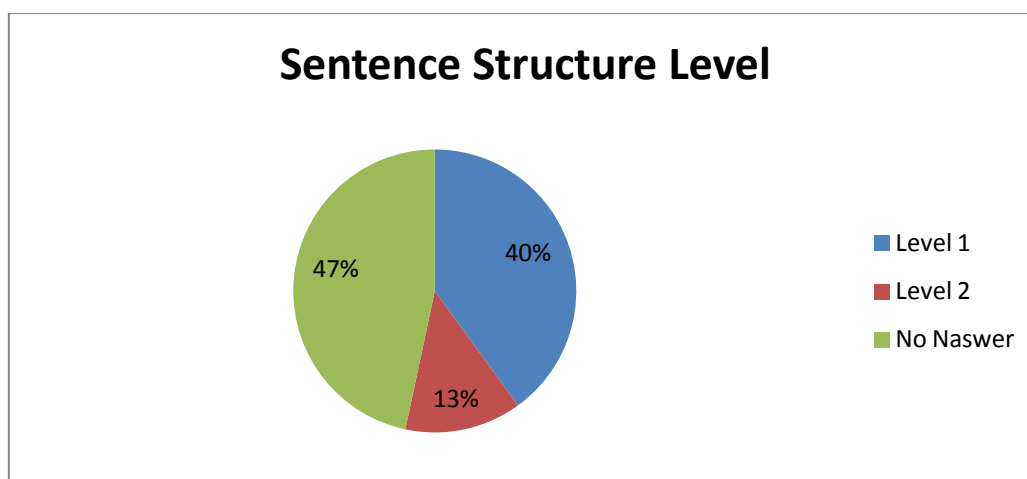


Figure 15

The tables from 7 to 11 above show the level of the main difficulties translators may encounter during their translation of commercial contracts in terms of lexical, syntactic, textual and cultural features. Table 7 shows that 27% of the participants face no difficulties in translating lexical features. Moreover, 26% of participants may face some difficulties while 47% did not respond to the question. In Table 8, the figures show that 40% of participants believe that syntactic features in legal texts cause less difficulty than lexical ones. About 14% of them may encounter some difficulties while 46% of translators did not respond. Table 9 provides answers to the question whether there is any difficulty that arises from cultural differences between the Arabic and English legal systems. The table indicates that 27% of participants believe that there is no difficulty. Only 2 believe that there is some difficulty in translating cultural terms. Table 10 shows that 34% of translators have no difficulties in translating textual features between Arabic and English. However, 13% of participants may face some difficulties in translating textual features from Arabic into English. Table 11 indicates that 40% of the respondents seem to have no problems in rendering legal sentences into English. In addition, 11% of them seem to encounter some level of difficulty.

The overall results of the above show that lexical features are at the forefront of legal translation difficulties that face translators, followed by cultural features and finally textual features and sentence structure.

As discussed above, training courses and working with professionals help translators to gain more experience in legal language which can have a good impact on translation quality. Such courses can help them to improve their translation skill as well as their legal background.

**6. Table 12: Which of the following do translators use to deal with translation difficulties?**

Consultation	No. of Translators	Percentage
Consult Dictionaries	8	53%
Consult Colleagues	5	33%
Consult Legal Drafters	4	27%
Consult Internet	9	60%
No answer		

Table 12

The pie-chart below illustrates the above figures as follows:

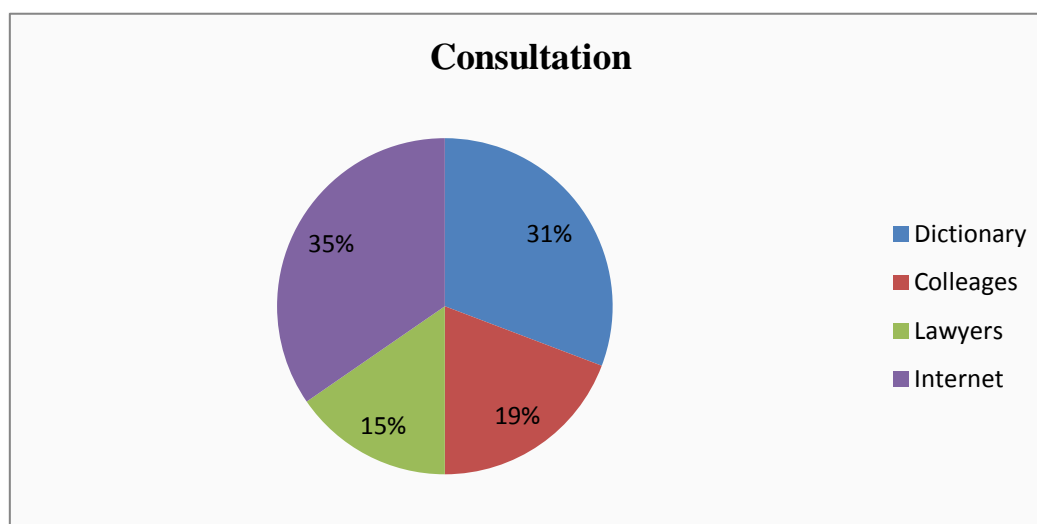


Figure 16

Table 12 above indicates the methods translators use in order to overcome any difficulties encountered during the translation process. The figures show that 60% of the participants prefer to consult the internet. Around 53% of the participants

resort to dictionaries and 33% consult colleagues. Only 27% of them consulted legal drafters. The results indicate that consulting the internet and dictionaries comes top among translators.

This is probably because translators do not have the opportunity to meet English legal drafters in Libya. Having only one law firm in Libya gives the translators less chance to work together with English lawyers. There should also be special programmes to help translators and lawyers work together (see Section 7.4.1).

### 7. Do you believe that collaborating with legal drafters is a good idea?

Level of Collaboration	Number of Translators	Percentage
yes	11	73%
No	0	0%
Maybe	0	0%
No answer	4	27%

Table 13

The pie-chart below illustrates the above figures as follows:

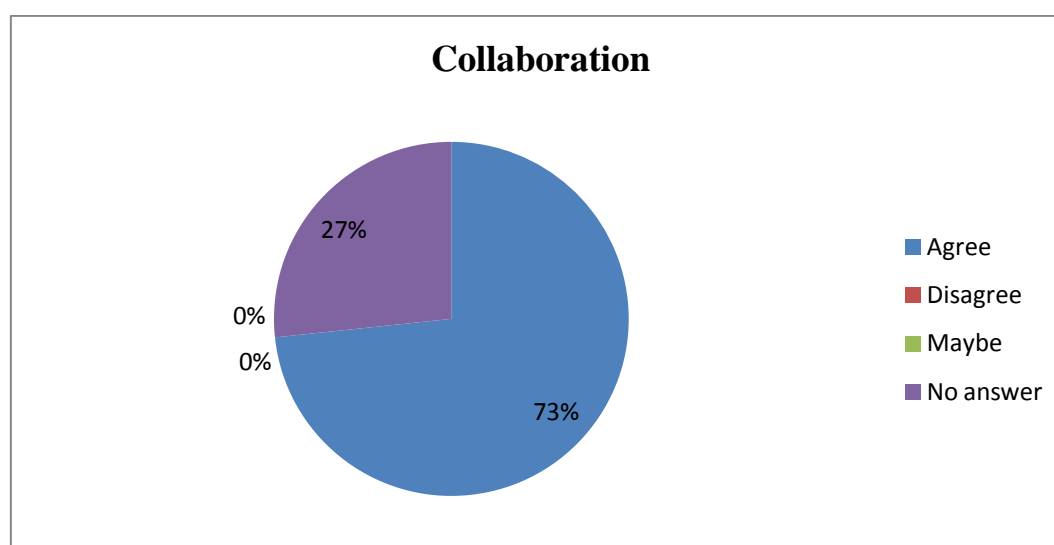


Figure 17

The overall results of the figure 17 above indicate that 73% of the participants believe that collaborating with legal drafters when translating legal texts is a good idea. Consulting legal drafters gives them the opportunity to explore English law with native speakers who have a professional English legal background.

It can be noticed from the above discussion and results that legal translation from Arabic into English can pose a great challenge to the translator.

### **Summary and Findings**

The overall results indicate that legal translators in Libya encounter several difficulties in translating legal documents, especially from Arabic into English. The majority of the translators believe that translating lexical features is the most difficult aspect of translating into English. The second greatest difficulty is translating cultural features. English legal sentences are long and complex ones in which 40% of the participants encountered difficulty. Translators seem to have difficulties translating into English more than into Arabic according to the results above. This is because English is not their first language; in addition, the majority of them do not receive any specialized translation courses. The figures above show that only 27% of respondents consult legal drafters. The majority seem to use the dictionary and internet. They all believe that collaborating with legal drafters is a good idea.

#### **7.4.2 Part Two Survey Completed by Legal Drafters:**

The following survey was designed for 15 commercial lawyers who work in a law firm in Tripoli and deal with commercial companies in Libya. They also have a good legal background about Libyan law. The questions aim to judge how satisfied lawyers are with the quality of the translation of Libyan commercial law. The survey is attached, with a sample of translated texts selected especially for lawyers in order to meet the standards of the research quality as an attempt to answer the question whether the legal translator in Libya encounters difficulties in translating legal texts from Arabic into English (See Appendices Text 53).

### **7.5 Analysis of Data Collection:**

The answers to the first question regarding work experience shows that 2 of the participants have over 10 years of experience. Three lawyers have less than 10

years working as commercial lawyers. These results indicate that commercial lawyers have enough experience to evaluate the English translations of the Libyan commercial law. Furthermore, they suggest that further training courses and recommendations which may help the translator of law in Libya in order to improve the quality of Arabic-into-English translations.

### 1- English translation quality

Quality	No. of Drafters	Percentage
Very good	0	0%
Good	0	0%
Acceptable	5	33%
Not acceptable	1	7%
No answer	9	60%

Table 14

The pie-chart below illustrates the above figures as follows:

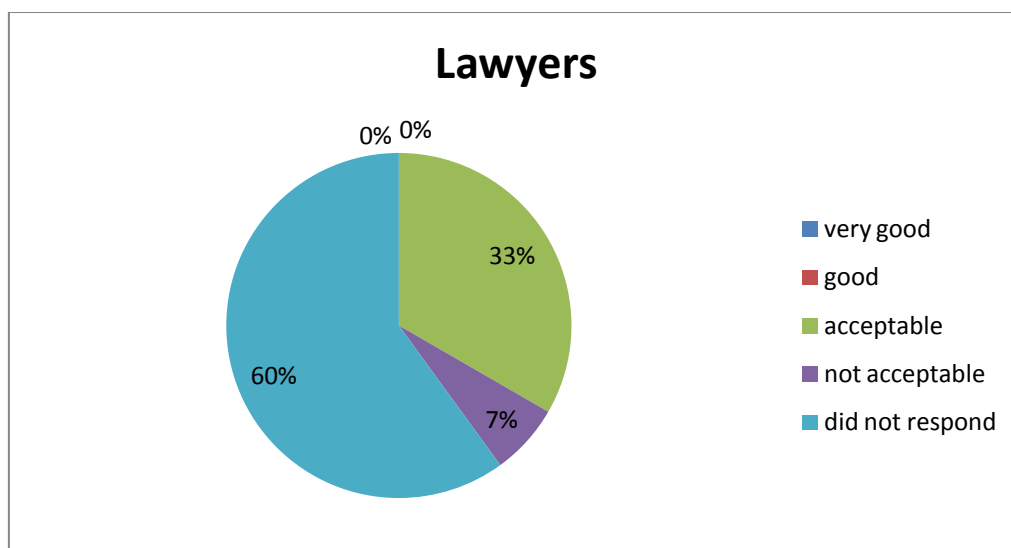


Figure 18

The results above in Table 14 show that 33% of commercial lawyers who responded to the survey believe that the English translation is acceptable. 7% believe it is not acceptable and the rest did not respond.

The following section illustrates the responses by commercial lawyers to the question whether they agree with the idea of collaboration between legal translators and commercial lawyers as a step towards giving legal translators a legal background as well as introducing legal translation to commercial lawyers.

## **2- Collaboration with Legal Translators**

This question addresses one of the main research questions on the advantages of collaboration between legal translators and legal drafters. The majority of respondents agreed that such collaboration improves the quality of legal translation.

## **3- Suggestions to improve the quality of translation in Libya**

The participants were asked if they had any suggestions in order to improve the quality of legal translation in Libya. Results show that 60% of the lawyers did not respond. The remaining 40% of them suggest the following:

- Legal training for legal translators in Libya in order for them to have a basic legal background.
- Attending workshops, conferences.
- Working with lawyers would give legal translators a better experience in understanding law more efficiently.
- Designing special courses for the legal translation sector.
- Introducing legal translation courses to universities as part of translation degrees.

It can be concluded that legal translators of Libya commercial law face challenges in translating legal texts from Arabic into English. Both legal translators of Libyan commercial law as well as lawyers agree that there should be collaboration between them.

The next and final chapter illustrates the results of this research and the will suggest some recommendations which may improve the quality of legal translation from Arabic into English in particular.



## **Chapter Eight**

### **8. Conclusions and Recommendations:**

This chapter will first provide a summary of the research, and then present its findings. It will also provide recommendations to the legal translation public and private sector in Libya as an attempt to improve the quality of legal translation in Libya. Finally, this chapter will present the contributions made by this research and suggest further studies.

The aims of this study were to explore and find answers to the following questions:

- 1- How legal Arabic and English documents of law differ and agree in terms of lexical syntactic and textual characteristics, especially the translation of Libyan law into English.
- 2- What difficulties legal translators in Libya encounter when translating legal documents.
- 3- How can the collaboration between legal translators and lawyers affect the quality of legal translation?
- 4- What significance can be attributed to the notion of equivalence, particularly the “equivalence” of a target text, and its role in achieving a more effective and useful translation.
- 5- How the language of legal documents, and chiefly the terminology used, can be clarified using a clearer and less complicated language.
- 6- What recommendations can be suggested for translators who work with Arabic-English legal documents, in particular Libyan legal texts?

## 8.1 Research Summary and Findings

This study presented a contrastive lexical analysis of 76 out of 214 legal texts translated by professional translators from Arabic and English with a particular focus on Libyan commercial law, in order to provide an answer to the research question concerned with the differences and similarities between Arabic and English legal texts in terms of lexical, syntactic and textual features.

The findings of the translation of lexical features can be illustrated as follows:

- 1- Libyan law tends to use unique lexical items and phrases, which can be a challenge for the translator since they make no sense in English if translated literally. Such unique lexical items can be political, economic or cultural. For example: “اللجنة الشعبية العامة”/al-lajna al-sha‘biyya al-‘āmma” which literally means “General People’s Committee”. And also “مؤتمر الشعب العام”/mu’tamar al-sha‘b al-‘āmm” meaning “The General People’s Congress”. The Libyan term “مكاتب الأخوة والمكاتب الشعبية”/makātib al-ukhuwwa wa al-makātib al-sha‘biyya” also seemed to cause ambiguity when translated literally as “Fraternity and People’s Bureaux”. The terms “مكاتب الأخوة والمكاتب الشعبية”/makātib al-ukhuwwa wa al-makātib al-sha‘biyya” as discussed in Chapter Six are diplomatic Libyan terms which refer to Libyan embassies and consulates. The English translation has no relevance to the Arabic term. There are many other cases in which the Arabic terms are literally translated, but the translator, for some reason, deemed it necessary to add the original term in the original language.
- 2- Legal terms are divided into pure technical, semi-technical and general words used in legal texts. Some of these pure technical terms originate from Latin or French. English also use archaic terms such as “thereof”, “hereof”, “therein” etc. Like English, legal Arabic also tends to use pure technical legal terms such as “الشخص الاعتباري” (al-shakhṣ al-‘tibārī),

which means “legal person” which is common in English legal texts. However, the differences between the Arabic and English languages as well as the problem of dealing with two different legal systems can be a challenging task for the translator.

- 3- There seems no big difference between binomials in Arabic and English and they do not seem to cause a lot of confusion in translation. For example: “المنتجات أو خدمات” (al-muntajāt aw al-khadamāt) was rendered as “products or services” and also “السلع أو المنتجات” (al-silāʿ aw al-muntajāt) was translated as “goods or products”.
- 4- The overall results of the questionnaire answered by legal translators in section 7.2.1 showed that lexical features constitute the main legal translation difficulties that face translators.
- 5- It is clear that translating legal language between two different languages and legal systems is difficult and complex. There are firstly the differences between the two legal systems and languages. Translating legal texts from Arabic into English is a major challenge facing the translator. Secondly, there is the lack of reliable Arabic-English law dictionaries which can provide translators with lexical equivalents. Faruqi's Law Dictionary is more widely used by translators from Arabic into English, but despite the large number of terms Faruqi's dictionary contains, it seems to give an explanation rather than a direct equivalent.
- 6- The results of the questionnaire answered by legal translators showed that the majority of them consult the dictionary.
- 7- Legal Arabic tends to use the present tense where legal English uses “shall, may or must + VERB”.
- 8- The passive is more dominant than the active verb form in legal Arabic. This is due to difference between the two languages.

- 9- The passive in Arabic is called “مجهول” (majhūl) and is formed differently from English, by merely changing the vowelling of the active, and is standard for all verbs. It is characterised by “ضمة” (ḍamma) on the first syllable. However, the modal passive in English is composed of “shall, may, must + be + participle”.
- 10- Modality in legal English is very common and English tends to use “shall” quite frequently. However, Arabic tends to use the present simple to express obligations. Arabic is expressed by different lexical items, as shown in chapters five and six such as “لا يحق” (la yaḥiqq), “لا تعتبر” (la tuʿtabar), “يجوز” (yajūz), “يجب” (yajib) etc.
- 11- The overall results of the analysis of syntactic features showed that there are significant differences between syntactic features in legal Arabic and English.
- 12- Both Arabic and English legal documents usually consist of four main parts; i) “ديباجة” (dībāja-Preamble), ii) “فاتحة” (fātiḥa-initial/Article, iii) “مواد” (mawādd-Articles), and iv) “خاتمة” (khātima-concluding Article).
- 13- Both Arabic and English use formal substitutes in legal language such as “المشار إليهم - almushār ilayhim” (the said).
- 14- Lexical repetition is common in both legal Arabic and legal English.
- 15- Both legal Arabic and English try to avoid using pronouns.

The analysis also showed the techniques the translators opted for to render the texts and the difficulties they encountered in dealing with such complicated types of texts. The study showed literal translation as one of the translation techniques. The translator also used transliteration in order to avoid translating a particular term as in “aljamāhīriyya”.

The results show that the translator adopted literal translation techniques in about 60% of his translations. The translation of meaning to meaning technique comes second with a percentage of 40% of the translations. Around a third of the examples were analysed in terms of lexical cohesion, modality and translation by addition technique. In 23% of the samples, the translator adopted a translation by addition technique. Only 12% of the texts showed binomials. It can be seen that the first three categories achieved almost the same degrees of frequency of the total number; however, the latter had only 12%.

The overall results show that the translator achieved 53% in transferring the legal meaning of the examples above (see chapter 6) compared to 36% of unacceptable translations. The graph below illustrates such results:

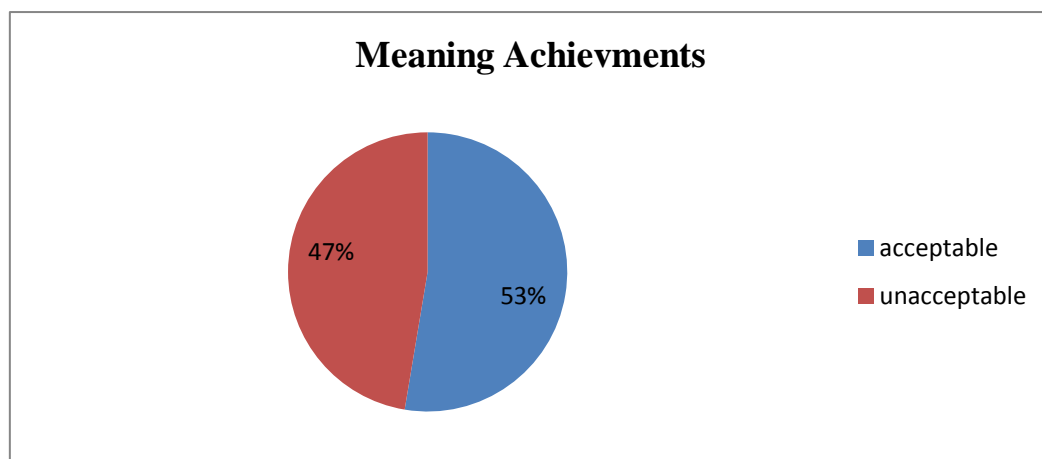


Figure 19

### **8.1.1 Collaboration between Legal Translators and Lawyers in Legal Translation:**

The results of the questionnaire which was answered by legal translators and lawyers showed that the majority of commercial lawyers (see section 7.3) strongly agree that there is a need for legal translators to have special training courses as well as collaborating with lawyers of English in order to achieve a better target text.

In addition to this, the majority of lawyers suggested special legal training for legal translators in order to improve translation quality. Legal translation is a very complex procedure which requires special professional skills. The translators of commercial law for example require special training and a good background in English commercial law. As suggested above, collaborating with commercial lawyers definitely improves the quality of the translation.

Again, the majority of the participants in the field of commercial law suggest that training translators of law, especially commercial law, gives the translators a very good background in law. Training courses of this type could be arranged by lawyers of commercial law by designing introductory legal courses for legal translators. Such courses can also be included at the undergraduate level of law studies at university departments in Libya. Results also show that translators find it harder to translate into English; therefore, improving English courses at Libyan universities should be taken seriously into account.

Finally, the discussion above shows that translating legal texts into English poses serious problems in Libya, which needs some serious consideration. Chapter six analyses various examples from Libyan commercial law translated into English by professional translators in Libya. It looks in detail into the lexical, syntactic and textual difficulties translators may encounter during the translation and how they deal with such difficulties.

It can be clearly seen that legal translators are responsible for international communication at an institutional level. Therefore, providing for effective legal translation and the creation of qualified legal translators is of prime significance within the framework of commercial companies. Legal translation is a very complex procedure which requires a specialist profession. The translators of commercial law, for example, require special training and a good background knowledge of English commercial law. As suggested above, collaborating with commercial lawyers definitely improves the quality of their translation.

The following points have been concluded from the research:

1. It is imperative that legal translation is precise and carefully reviewed.
2. The legal document translations should undergo a process of legal verification by a native speaker to guarantee their faithfulness (Newmark, 1991: 30).
3. It is to be expected that a good quality and accurate legal translation cannot be achieved quickly, and that therefore the translator must be allowed a reasonable amount of time to complete the task. Quick completion of the translation may result in the commission of grave errors. However, forward planning can greatly assist the process.
4. A particular form of rendering is necessary for legal translation. The translation of this type of effect must treat every single word and acknowledge differences in terminology and purposes as well as context, intention and possible mistranslations. The majority of legal writings are definitions, and the standard format, syntax and archaisms must be taken into account if the texts in question are intended to be simultaneously legitimate in the target language.

## **8.2 Recommendations**

The results above stress the need for a better translation quality. That could be achieved by the following:

- 1- Most Libyan universities offer a degree in English with literature and teaching modules. However, some departments offer translation modules, but only in general practical translation. Offering specialised legal translation courses at Libyan universities will definitely improve the quality of legal translation in Libya.
- 2- Although dedicated dictionaries are indispensable to this type of translation, they are in themselves not enough to resolve difficulties with vocabulary. Translators must also study other appropriate writings and consult legal experts.
- 3- It is vital that the translator knows the essential ways in which the relevant legal systems differ. So attending legal courses, conferences and specialised legal training courses is a must.
- 4- Libyan translators should not necessarily accept commissions for legal translations if they lack the skills and vocabulary and equivalent terms to complete the work to an appropriate standard. Legal language is complex and any translation mistake could result in a huge financial loss.

## **8.3 Suggestions for Further Research:**

This research mainly focused on Arabic English translation with reference to Libyan commercial law and it was conducted as a comparative approach. Further studies could tackle the difficulties Libyan translators may encounter in translating different Libyan legal documents as well as English legal texts and compare them to each other by using the same methodology of this study.



Modality in both Arabic and English legal texts can be also researched on a wider scale using an empirical study when there are more law firms and translation agencies in Libya.

Finally, research could be carried out in the future addressing the numerous difficulties that occur in the Arabic-English translation of other legal documents such as court cases, judgements, family law, etc.

It would be also possible to conduct similar studies in other Arab countries by adapting the comparative analysis conducted in this study or adopting an empirical study by designing questionnaires for a large number of professional translators in order to tackle the linguistic challenges of the practice of legal translation.

There is also a need for standardising Arabic legal terminology, which could provide a guideline for legal translators in Arab countries in order to overcome any translation difficulties and ambiguity.

## Appendices

### Text 1

قانون رقم (6) لسنة 1372 و.ر  
بشأن تنظيم أعمال الوكالات التجارية

قرار اللجنة الشعبية العامة رقم (136) لسنة 1372 و.ر ( 2004 مسيحي)  
بإصدار اللائحة التنفيذية للقانون رقم ( 6) لسنة 1372 و.ر  
بشأن تنظيم أعمال الوكالات التجارية

قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (52)  
لسنة 1372 و.ر ( 2004 مسيحي)  
بشأن الفئات السلعية التي يجوز استيرادها من قبل ادوات الاستيراد

قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (12)  
لسنة 1373 و.ر ( 2005 مسيحي)  
بشأن حظر استيراد بعض السلع مالم يكن للشركات المنتجة لها  
وكلاء محليين معتمدين في الجماهيرية العظمى

قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (190)  
لسنة 1373 و.ر ( 2005 مسيحي)  
بشأن حظر استيراد بعض السلع مالم يكن للشركات المنتجة لها  
وكلاء محليين معتمدين في الجماهيرية العظمى

قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (191)  
لسنة 1373 و.ر ( 2005 مسيحي)  
بشأن منح ضمان السلع المعمرة

المستندات المطلوبة للحصول على الاذن اللازمة لمزاولة  
نشاط الوكالات التجارية والقيد بالسجل الخاص بالوكلاء التجاريين

نموذج استرشادي ( لعقد او اتفاق )  
لمزاولة اعمال الوكالة التجارية

متوفر باللغتين ( العربية والانجليزية)

### Text 2

قانون رقم (6) لسنة 1372 و.ر  
بشأن تنظيم أعمال الوكالات التجارية

مؤتمر الشعب العام .  
- تنفيذاً لقرارات المؤتمرات الشعبية الأساسية في دور انعقاده العام السنوي للعام .  
1371 و.ر .  
- وبعد الإطلاع على إعلان قيام سلطة الشعب .  
- وعلى الوثيقة الخضراء الكبرى لحقوق الإنسان في عصر الجماهير .  
- وعلى القانون رقم (20) لسنة 1991 إفريقي بشأن تعزيز الحرية .  
- وعلى القانون رقم (1) لسنة 1369 و.ر بشأن المؤتمرات الشعبية واللجان الشعبية .  
- وعلى القانون التجاري وتعديلاته .  
- وعلى القانون رقم (33) لسنة 1971 ف بشأن تنظيم أعمال الوكالات التجارية .  
- وعلى القانون رقم (87) لسنة 1975 إفريقي في شأن بعض الأحكام الخاصة بمزاولة أعمال الوكالات التجارية .  
صاغ القانون الآتي  
المادة الأولى  
في تطبيق أحكام هذا القانون تدل التسميات التالية على المعاني المبينة قرين كل منها :-  
I . الوكالة التجارية :- هي نشاط تجاري يقوم به شخص وفقاً لأحكام هذا القانون ، ويلتزم بممارسة نشاط الوكالة التجارية إبرام عقد أو إتفاق بين (الوكيل والموكل) يمهّد فيه بمزاولة أحد الأنشطة المنصوص عليها في هذا القانون .

Law No. (6) of 1372 PD. (2004) for Organizing the Activities of Trade Agencies

Decision of General People's Committee No. (136) of 1372 PD. (2004) for Issuing the Executive Regulation for Law No. (6) of 1372 PD. (2004) for organizing Trade Agency Activities.

Decision of General People's Committee for Economy & Commerce No. (52) of 1372 PD. (2004) regarding the Commodity Groups allowed for Import by the Authorized Bodies.

Decision of Secretary of General People's Committee for Economy & Commerce No. (12) of 1373 PD. (2005) for prohibition of import of certain commodities, unless the producing companies thereof have local authorized Trade Agents in the Great Jamahiriya.

Decision of Secretary of General People's Committee for Economy & Commerce No. (190) of 1373 PD. (2005) for Prohibition of Importing Certain Commodities, unless they have Local Agents authorized in the Great Jamahiriya.

Decision of Secretary of General People's Committee for Economy & Commerce No. (191) of 1373 PD. (2005) for granting Guarantee for Durable Goods

A Guiding Form for (Contract & Agreement) for performing Trade Agency

Document required for Registration in the Commercial Register.

(Available in Arabic and English)

Great Socialist People's Libyan Arab Jamahiriya  
General People's Congress

Law No. (6) of 1372 P.D (2004) for Organizing the Activities of Trade Agencies.

The General People's Congress...

In compliance with the decisions of the Basic People's Congresses in their general annual session for 1371 P.D (2004), and

After perusal of the Declaration for establishing the People's Authority,

The Grand Green charter for Human Rights in the Era of Masses,

Law No. (20) of 1991 for enhancing freedom,

Law No. (1) of 1369 P.D (2001) regarding People's Congresses and Committees,

The Commercial Law and its amendments,

Law No. (33) of 1971 for organizing the activities of Trade Agencies, and

Law No. (87) of 1975 regarding certain provisions for performing the activities of Trade Agencies

Do hereby formulate the following Law:

Article (1)

In applying the provisions of this Law, the following terms shall have the meanings shown against each of them:

## Text 3

2. الوكيل التجاري :- هو الشخص الطبيعي أو الاعتباري الذي يؤذن له بمزاولة عمل أو أكثر من أعمال الوكالة التجارية ، وذلك وفقاً للضوابط والشروط المنصوص عليها في هذا القانون ، وتنصف أعمال الوكيل التجاري في الغالب بالتعريف بمنتجات أو خدمات محددة واستيرادها وتوزيعها إما مباشرة أو عن طريق موزعين يتعاقد معهم وتقدم خدمات ما بعد البيع وتحمل مسئولية الغش التجاري أو العيب الذي يلحق بالسلع أو الخدمات التي تؤدي بمعرفة أو عن طريقه .
3. اللجنة :- اللجنة الشعبية العامة للاقتصاد والتجارة .
4. الأمين :- أمين اللجنة الشعبية العامة للاقتصاد والتجارة أو من يقوم مقامه .
5. الإدارة المختصة :- الإدارة العامة للشركات والتسجيلات التجارية بأمانة اللجنة الشعبية العامة للاقتصاد والتجارة أو من يقوم مقامها .
6. الموكل :- هو الشخص الأجنبي الطبيعي أو الاعتباري الذي يقوم بإنتاج أو توريد السلع وتقدم الخدمات ويتخذ محلاً معروفاً أو شركة أو مؤسسة أو مصنعاً يتمتع بكيان قانوني مستقل .
7. السلع والخدمات :- كل منتج من المنتجات أو خدمة من الخدمات المنصوص عليها في اللائحة التنفيذية لهذا القانون ، تحمل علامة تجارية معترفاً بها ومسجلة وفقاً للقانون .

### المادة الثانية

يعتبر من أعمال الوكالة التجارية القيام بأحد الأعمال الآتية :-

التوكيل التجاري	المعتمد التجاري
التوكيل بالعمولة	التمثيل التجاري
التسويق	الوساطة والمسمرة

## Text 4

ويقصر عمل الوكالة التجارية على الأشخاص المنتمين بحسبة الجماهيرية العظمى والجهات اللبية المملوك رأسها بالكامل للبيين .

### المادة الثالثة

يصدر الإذن من اللجنة بممارسة نشاط الوكالة التجارية للجهات أو الأفراد ممن يمارسون بشكل اعتيادي نشاط الاستيراد والتصدير أو أحد الأنشطة الخدمية وذلك على النحو الذي سجد في اللائحة التنفيذية لهذا القانون . ولا يجوز مزاولة نشاط الوكالة التجارية إلا بعد الحصول على الإذن المذكور .

### المادة الرابعة

يتضمن الإذن بممارسة عمل الوكالة التجارية ما يلي :-  
 - تحديد نوع الفئة السلعية أو الخدمة التي يسمح بمزاولة عمل الوكالة التجارية فيها .  
 - تحديد النطاق المكاني لعمل الوكيل التجاري داخل الجماهيرية العظمى .  
 - مدة الوكالة التجارية .

### المادة الخامسة

تقسم السلع والخدمات لأغراض مزاولة عمل الوكالة التجارية إلى فئات سلعية وخدمية متجانسة يؤذن للشخص بممارسة النشاط في فئة واحدة منها على الأكثر . ويجوز للجنة أن تاذن لبعض الأشخاص الاعتبارية بممارسة أكثر من فئة واحدة وذلك في الحالات التي تراها لازمة أو ضرورية لعمل الوكالة التجارية .

### المادة السادسة

على الوكلاء التجاريين إبرام عقود أو اتفاقيات رسمية مع الموكلين الأجانب تتضمن على الأخص تحديد نوع الوكالة التجارية ومدتها ومجال النشاط ونطاقه والمقابل المالي لعمل الوكيل . ويجب عليهم إحالة صور من الاتفاقيات والعقود المبرمة إلى الإدارة المختصة فور مباشرة النشاط .

- 1- Trade Agency:  
Means commercial activity performed by a person under the provisions of this Law. It is necessary for performing the Trade Agency activity to sign a contract or agreement between the (Agent and the Principal) for performing activity specified in this Law.
- 2- Trade Agent:  
Means the natural or artificial person permitted to perform a work or more of the Trade Agency activities under the rules and conditions specified in this Law. The activities of the Trade Agent mostly involve introducing products of specific services and import and distribution thereof, either directly or through distributors contracted therewith and providing after-sale services, and bearing the responsibility for commercial deceit or defect in commodities or services performed by or through him.
- 3- The Committee:  
Means the General People's Committee for Economy and Commerce.
- 4- The Secretary:  
Means the Secretary of General People's Committee for Economy and Commerce or his Deputy.
- 5- The Competent Department:  
Means the Companies and Commercial registration Department in the Secretariat of General People's Committee for Economy and commerce or its Deputy.
- 6-The Principal/Authorizer:  
Means the foreign natural or artificial person who produces or delivers the commodities and provides services, taking a known place, company, institution or factory having independent legal status.
- 7- Commodities and Services:  
Means any product or service specified in the executive regulation for this Law, and carrying a trade mark recognized and registered in accordance with the Law.

### Article (2)

Reference of any of the following works shall be considered as Trade Agency activities:-

Trade Agency, Authorized Agent, Agency by Commission, Commercial Representation, Distribution, Mediation and Brokery.

The Trade Agency work shall be confined to the persons holding the nationality of the Great Jamahiriya and the bodies whose capital is fully owned by Libyans.

### Article (3)

The provision for performing the Trade Agency activity shall be issued by the committee to the bodies or individuals performing normally the import and the export activity or a service activity, as indicated in the executive regulation for this Law.

It is not allowed o perform the Trade Agency activity, except after obtaining the said permission.

### Article (4)

The permission for performing the trade Agency work shall include the following:

Specifying the type of commodity or service category allowed for performing the Trade Agency activity therein.

Specifying the regional scope of the Trade Agent work inside the Great Jamahiriya.

Period of Trade Agency.

### Article (5)

The commodities and services shall be divided for the purposes for performing Trade Agency activity into homogeneous/consistent commodity and service categories permitted for the person to perform the activity in one category thereof as maximum.

The committee may permit certain artificial bodies to perform more than one category in the cases deemed necessary for the work of Trade Agency.

### Article (6)

The Trade Agents shall conclude contracts or official agreement with the foreign Principles/Authorizers, including particularly the type of trade Agency , its period, filed/scope of activity and the financial remuneration for the Agent's work.



## Text 5

وتحدد اللائحة التنفيذية المهلة المناسبة لإحالة صور العقود واتفاقيات وإجراءات إيداعها وتسجيلها .

**المادة السابعة**

يجوز للأمين إلزام الوكيل التجاري بصياغة العقد ، أو الاتفاق المبرم بينه وبين الموكل الأجنبي في شكل معين بغرض توضيح طبيعة العلاقة بين طرفيه وتحديد مسؤولية الوكيل إزاء المتعاملين معه.

ويصدر بالنموذج ونظام تطبيقه قرار من الأمين .

**المادة الثامنة**

للمجلس الشعبية العامة قصر مزاولة عمل الوكالة التجارية على بعض الأشخاص الاعتبارية المالية وذلك بالنسبة إلى بعض السلع والخدمات ذات الطبيعة الخاصة ، أو الاستراتيجية ، أو ذات المردود الاقتصادي الكبير .

وتبين اللائحة التنفيذية لهذا القانون الضوابط اللازمة لقصر ممارسة أعمال الوكالة التجارية .

**المادة التاسعة**

ينشأ بالإدارة المختصة سجل عام تقيده به البيانات الأساسية للوكلاء التجاريين المأذون لهم بمزاولة النشاط .

وتبين اللائحة التنفيذية إجراءات مسك السجل والبيانات الواجب تدوينها به والرسوم المقررة للقيود وتجديده .

**المادة العاشرة**

يحظر التعاقد مع الأجانب سواء كانوا أشخاصاً طبيعيين أو اعتباريين بشأن توريده السلع أو الخدمات ما لم يكن لهم وكلاء تجاريين معتمدين وفقاً لأحكام هذا القانون .

ويستثنى من ذلك السلع والخدمات التي يتم تحديدها من قبل اللجنة الشعبية العامة للاقتصاد والتجارة .

**المادة الحادية عشرة**

تصدر اللائحة التنفيذية لهذا القانون بقرار من اللجنة الشعبية العامة بناء على عرض من اللجنة الشعبية العامة للاقتصاد والتجارة تتضمن الآتي :-

- تحديد الشروط والإجراءات المطلوبة للحصول على الإذن بمزاولة نشاط الوكالة التجارية وتجديده .
- تحديد الفئات السلعية والخدمية التي يجوز الإذن بممارسة عمل الوكالة التجارية فيها .
- تحديد الرسوم اللازمة للقيود وتجديده وتدوين البيانات وغيرها من الإجراءات .
- تحديد الحد الأدنى لفترة الضمان المقدمة بالنسبة للسلع المعمرة والإجراءات المطلوبة لصيانة السلع المنهية أو استبدالها وشهادة الضمان والبيانات التي يجب أن تتضمنها .
- تحديد النسب التي يلزم الموكل بتوريدها في شكل قطع غيار ومعدات .
- تحديد الحد الأعلى لعدد الوكالات التجارية التي يسمح للأشخاص الاعتبارية بمزاولةها .
- الحالات التي يجوز فيها إلغاء الوكالة التجارية أو إيقافها والجهة التي تملك ذلك .
- الإجراءات والشروط المطلوبة للتنازل عن الوكالة التجارية أو تحويلها .

**المادة الثانية عشرة**

يعاقب بالحبس لمدة لا تقل عن سنة ولا تزيد على ثلاث سنوات ، أو بفرامة لا تقل عن (10000 دينار) عشرة آلاف دينار أو بكليهما ، كل من يرتكب عملاً بالمخالفة لأي حكم من الأحكام الواردة في المواد (3 ، 6 ، 10) من هذا القانون ، وتضاعف العقوبة في حالة العود بالإضافة إلى إلغاء الإذن بممارسة عمل الوكالة التجارية .

**المادة الثالثة عشرة**

يلغى القانون رقم (33) لسنة 1971 ف ، والقانون رقم (87) لسنة 1975 ف ، المشار إليهما ، كما يلغى كل حكم يخالف أحكام هذا القانون .

They shall also refer copies of the signed agreements and contracts to the competent Department immediately or starting the activity.

The executive regulation shall specify the suitable period for referring the copies of the contracts and agreement and the procedures for depositing and registration thereof.

### Article (7)

The Secretary may obligate the Trade Agent to formulate the contract or agreement signed between him and the foreign Authorizer in a specific form for indicating the nature of relationship between both parties and specifying the responsibility of the Agent towards those dealing with him. The form and method of applying it shall be issued by decision of the Secretary.

### Article (8)

The General People's Committee may confine performing the Trade Agency activity to certain Libyan artificial persons with respect to certain commodities and services of special nature or strategic or having large economic returns.

The executive regulation for this Law shall indicate the necessary rules for confining performance of Trade Agency activity.

### Article (9)

There shall be established in the competent Department a general register for recording the basic data on the Trade Agents permitted to perform the activity.

The executive regulation shall indicate the procedures for keeping the Register and the data to be recorded therein and the fees for registration and renewal thereof.

### Article (10)

It is prohibited to sign contracts with foreigners, whether natural or artificial persons, for supply of commodities or services, unless they have authorized trade agents under the provisions of this Law. The commodities and services specified by the General People's Committee for Economy and commerce shall be excluded from that.

### Article (11)

The executive regulation for this Law shall be issued by decision of the General People's Committee upon submission of the General People's Committee for Economy and commerce, including the following:-

- Specifying the conditions and procedures for obtaining the permission for performing the Trade Agency activity and renewal thereof.
- Specifying the commodity and service categories which may be permitted for performing the Trade Agency activity.
- Specifying the necessary fees for registration and renewal thereof, recording data and other procedures.
- Specifying the minimum guarantee period for the durable goods and the procedures for maintenance of the defective goods or replacement certificate and data to be included therein.
- Specifying the percentages to be delivered by the Authorizer/Principal as spare parts and equipment.
- Specifying maximum number of Trade Agencies allowed for the artificial persons.

- The cases where the Trade Agency may be cancelled or suspended and the competent body for that.
- The procedures and conditions required for assignment of the Trade Agency or Transfer thereof.

### Article (12)

There shall be punished by imprisonment for a period not less than one year and not more than three years or a fine not less than LD 10,000 (Ten thousand Libyan Dinars) or both, anyone committing an act in contravention to any provision of Articles (3, 6, 10) of this Law. The penalty shall be doubled in case of repetition, in addition to canceling the permission for performing the Trade Agency activity.

### Article (13)

Law No. (33) of 1971 and Law No. (87) of 1975 shall be repealed, as well as any provision contravening the provisions of this Law.

## Text 6

المادة الرابعة عشرة  
يُعمل بهذا القانون من تاريخ صدوره ، وينشر في مدونة التشريعات .  
مؤتمر الشعب العام

الجمهورية العربية الليبية الشعبية الاشتراكية العظمى  
اللجنة الشعبية العامة  
قرار اللجنة الشعبية العامة  
رقم (136) لسنة 1372 و.ر (2004 مسيحي)  
بإصدار اللائحة التنفيذية للقانون رقم (6) لسنة 1372 و.ر.  
بشأن تنظيم أعمال الوكالات التجارية

اللجنة الشعبية العامة ،،،،  
بعد الإطلاع على القانون رقم (1) لسنة 1369 و.ر، بشأن المؤتمرات الشعبية واللجان الشعبية، ولائحته التنفيذية.  
وعلى القانون رقم (6) لسنة 1972 و.ر، بشأن تنظيم أعمال الوكالات التجارية .  
وعلى ما قرره اللجنة الشعبية العامة في اجتماعها العادي الثاني لسنة 1369 و.ر.  
وعلى ما عرضة أمين اللجنة الشعبية العامة للاقتصاد والتجارة بكتابة رقم (1741) المؤرخ في 1372/06/07 و.ر .  
وعلى ما قرره أمانة اللجنة الشعبية العامة في اجتماعها العادي الثاني والمئتين لسنة 1372 و.ر.

قررت  
مادة (1)  
يُعمل بأحكام اللائحة التنفيذية للقانون رقم (6) لسنة 1372 و.ر، بشأن تنظيم أعمال الوكالات التجارية المرفقة نصوصها بهذا القرار .  
مادة (2)  
يُعمل بهذا القرار من تاريخ صدوره ، وينشر في مدونة التشريعات .

## Text 7

اللائحة التنفيذية للقانون رقم (6) لسنة 1372 و.ر  
بشأن تنظيم أعمال الوكالات التجارية  
مادة (1)  
تعريفات  
في تطبيق أحكام هذه اللائحة تدل المسميات التالية على المعاني المبينة قرين كل منها :-  
1- اللجنة :- اللجنة الشعبية العامة للاقتصاد والتجارة .  
2- الأمين :- أمين اللجنة الشعبية العامة للاقتصاد والتجارة أو من يقوم مقامه .  
3- الإدارة المختصة :- الإدارة العامة للشركات والتسجيلات التجارية ، بأمانة اللجنة الشعبية العامة للاقتصاد والتجارة أو من يقوم مقامها .  
4- الوكالة التجارية :- هي نشاط تجاري يقوم به الشخص وفقاً لأحكام هذه اللائحة ويلزم لممارسة نشاط الوكالة التجارية إبرام عقد أو اتفاق بين (الوكيل والموكل) يعيد فيه بمزاولة بعض الأنشطة المنصوص عليها في هذه اللائحة .  
5- الوكيل التجاري :- هو الشخص (الطبيعي أو الاعتباري) الذي يؤذن له بمزاولة عمل أو أكثر من أعمال الوكالة التجارية ، وفقاً للشروط والشروط المنصوص عليها في هذه اللائحة ، وتنصف أعمال الوكيل التجاري في الغالب بالتعريف بمنتجات أو خدمات محددة واستيرادها ، وتوزيعها إما مباشرة أو عن طريق موزعين يملك معهم وتقديم خدمات ما بعد البيع ، وتحمل مسؤولية البيع التجاري أو العيب الذي يلحق بالسلع أو الخدمات التي يؤدي بمعرفة أو عن طريقه .  
6- الموكل :- من الشخص (الطبيعي أو الاعتباري) الذي يقوم بإنتاج أو توريد السلع المبتدع لها أو تقديم الخدمات ، ويتخذ محلاً معروفاً سواء كان شركة أو مؤسسة أو مصنعاً يتمتع بكيان قانوني مستقل .  
7- السلع والخدمات :- كل منتج من المنتجات أو خدمة من الخدمات المنصوص عليها في هذه اللائحة ، وتحصل علامة تجارية معترف بها ومعجلة في بلد إثنائها وفقاً للقانون .

### Article (14)

This Law shall come into force from the date of its issue, and shall be published in the Legislations Encyclopedia.

The General People's Congress

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA  
General People's Committee  
Decision of General People's Committee No. (136) of 1372 PD. (2004) for Issuing the Executive Regulation for Law No. (6) of 1372 PD. (2004) for Organizing Trade Agency Activities  
The General People's Committee  
After perusal of Law No. (1) of 1369 PD. (2001) regarding People's Congresses and Committees, and its executive regulation, Law No. (6) of 1372 PD. (2004) for organizing Trade Agency activities, Decision of General People's Committee in its 2<sup>nd</sup> Ordinary meeting for 1369 P.D. (2004), Submission of Secretary of General People's Committee for Economy & Commerce by his letter No. (1741) dated 07.06.2004, and Decision of Secretariat of General People's Committee in its 22<sup>nd</sup> Ordinary Meeting for 1372 PD. (2004)  
Do hereby Decide:-  
Article (1)  
The provisions of the executive regulation for Law No. (6) of 1372 PD. (2004) for organizing the Trade Agency activities, attached hereto shall be applicable.  
Article (2)  
This decision shall come into force from the date of its issue, and shall be published in the Legislations Code.

GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA  
General People's Committee  
Decision of General People's Committee No. (136) of 1372 PD. (2004) for Issuing the Executive Regulation for Law No. (6) of 1372 PD. (2004) for Organizing Trade Agency Activities  
The General People's Committee  
After perusal of Law No. (1) of 1369 PD. (2001) regarding People's Congresses and Committees, and its executive regulation, Law No. (6) of 1372 PD. (2004) for organizing Trade Agency activities, Decision of General People's Committee in its 2<sup>nd</sup> Ordinary meeting for 1369 P.D. (2004), Submission of Secretary of General People's Committee for Economy & Commerce by his letter No. (1741) dated 07.06.2004, and Decision of Secretariat of General People's Committee in its 22<sup>nd</sup> Ordinary Meeting for 1372 PD. (2004)  
Do hereby Decide:-  
Article (1)  
The provisions of the executive regulation for Law No. (6) of 1372 PD. (2004) for organizing the Trade Agency activities, attached hereto shall be applicable.  
Article (2)  
This decision shall come into force from the date of its issue, and shall be published in the Legislations Code.



## Text 8

**مادة (2) مكتب المحاماة**

يختر من أعمال الوكالة التجارية القيام بأحد الأعمال الآتية :-

- 1- التوكيل التجاري : ويقصد به تولى أعمال تجارية لحساب الموكل وباسمه ، ولا تقتصر مجانية التوكيل التجاري ، ولا يشمل غير العمليات التجارية المنصوص عليها صراحة في عقد الوكالة .
- 2- التوكيل التجاري : هو الشخص الذي توكّل إليه ميممة مزاولة نشاط أحد التجار ، في المكان الذي يزاول فيه الأخير تلك التجارة أو في أي مكان آخر .
- 3- التوكيل بالعمولة : هو توكيل يكون محله بيع أو شراء لحساب الموكل وباسم الوكيل بالعمولة .
- 4- التمثيل التجاري : عقد يتعبد بمقتضاه طرف بالقيام بإبرام عقود تجارية بصفة مستديرة لحساب طرف آخر ، في منطقة معينة نظير مكافأة .
- 5- وكيل التوزيع : هو الشخص الذي يقوم بتوزيع السلعة ذياية عن وكيلها ، وفقاً للضوابط والشروط المتفق عليها معه ، وفي حدود المنطقة الجغرافية المتفق عليها .
- 6- الواسطة والميسرة : هي التوسط بين شخصين أو أكثر ، للوصول إلى عقد صفقة دون أن يكون الوسيط أو الميسر مزبناً يأخذ منهم بعلاقات عمل أو تحت إمرة أحدهم على أن يستحق عمولة وفقاً للاتفاق أو العرف أو التسمية الرسمية للحرفة .

- وتسري نصوص القانون التجاري الليبي فيما يتعلق بهذه الأعمال من أحكام .

**مادة (3)**

يصدر الإنن بممارسة نشاط الوكالة التجارية بقرار من اللجنة ، بمزاولة للضوابط التالية :-

- 1- عدم منح الإنن بمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .
- 2- عدم منح أكثر من وكالة واحدة للشخص في النوع الواحد من السلع والخدمات المبينة في الكشف المرفق بهذه اللائحة .
- 3- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .
- 4- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .
- 5- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

في هذا الإلحاح :-

1- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

2- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

3- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

4- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

5- عدم منح الإنن لمزاولة نشاط الوكالة التجارية في السلع المقصود استيرادها على بعض المؤسسات والشركات العامة ، إلا تلك الجهات .

6- The Principal: The foreign natural or artificial person producing or supplying the goods produced thereby or providing the services, taking a well-known place, whether being a Company, institution or factory having independent legal status.

7- Commodities/goods and services: Any product or services specified in this regulation carrying a recognized Trade Mark registered in the country of origin under the Law.

**Article (2)**

Performance of any of the following works shall be considered as Trade Agency activities:

- 1- Trade Agency means: performance of commercial activities to the account of the Trade Agent and in his name, unpresuming free Trade Agency, excluding other commercial activities than those specified explicitly in the Trade Agency contract.
- 2- The Authorized Agent: means the person entrusted with the task of performing the activity of a merchant/trader in the place where the latter performs such trade or any other place.
- 3- Agency by commissions means an Agency for sale or purchase to the account of the principal and in the name of the Agent by commission.
- 4- Commercial representation: A contract under which a party undertakes to conclude commercial contracts permanently to the account of another party in a specific area against gratuity.
- 5- Distribution Agent: The person who distributes the commodity on behalf of its Agent under the rules and conditions agreed upon therewith, and within the limits of the geographic area agreed upon.

6- Mediator & Brokery: Means mediation between two persons or more for reaching/concluding a deal, without connection of the mediator or broker with any of them for work relations or under control of any of them, to be entitled to commission under the agreement, practice official tariff of the job.

The provisions of the Libyan commercial Law shall be applicable to matters related to these provisions.

**Article (3)**

The permission for performing the Trade Agency activity shall be issued by decision of the Committee, in observance of the following rules:-

- Not to grant the permission for performing Trade Agency activity in commodities and goods whose import is confined to certain public institutions and general companies, except for such bodies.
- Not to grant more than one Agency to the person in the same kind of goods and services indicated in the list attached hereto.
- To adhere to the number of Agencies allowed to be performed by the person in all commodity groups under Article (5) hereof.
- Consistency of the activity permitted for performance by the applicant with the object of the Trade Agency required for permission of performance thereof.

### Article (4)

The Trade Agent shall abide by the following:-

- 1- To sign an Agency contract or agreement with a principal enjoying good reputation, whose products or services are distinguished by good quality and perfection and conformity with health/hygienic conditions and national or international standard specifications approved for the goods and services.
- 2- To grant certificates of guarantee for the durable goods in which he performs the Trade Agency activity, as per nature of each commodity. In all cases, the guarantee period shall not be less than (6) six months, to be valid from the date of selling the commodity to the consumer, whether sale is done by the Agent or through another distributor.
- 3- To replace at anytime, upon request of the person concerned, the defective or damaged commodities or repair or compensate for them during the guarantee period for the said goods.

## Text 9

4- توفير قطع الغيار، والمهمات، والأدوات اللازمة للسلع التي يتعامل فيها، والقيام بإصلاح السلعة الفاسدة أو المعيبة دون مقابل خلال فترة الضمان .

5- تخصيص ما لا يقل عن (2%) من قيمة السلع المعمرة الموردة إلى الجماهيرية العظمى في شكل قطع غيار، ومهمات، وأدوات لازمة للصيانة .

6- فتح ورش للصيانة اللازمة لإزالة عجز السلع أو تجديدها أو إزالة أي عطل فيها، وتوفير الفنيين لإصلاح السلع الفاسدة أو المعيبة الموردة عن طريقه دون مقابل مالي، بشرط أن تكون شهادة الضمان للسلعة الفاسدة أو المعيبة سارية المفعول،

7- التقيد بالأسعار المحددة قانوناً للسلع والخدمات المستحقة من قبله .

**مادة (5)**

يكون الحد الأقصى لعدد الوكالات التجارية التي يسمح بمزاولة عملها من قبل الوكلاء التجاريين داخل الفئة الواحدة أو في جميع الفئات السلعية أو الخدمية، على النحو التالي:

الأشخاص الطبيعيين: (ثلاثة وكالات)

الشركاء: (خمس وكالات)

الأشخاص الاعتباريين: (عشر وكالات)

الجماهيرية العربية الليبية الشعبية الاشتراكية العظمى

اللجنة الشعبية العامة

- الأشخاص الاعتبارية الخاصة والعامة (عشر وكالات)

ولا يجوز لأي من المذكورين أعلاه أن يكونوا شركاء ظاهرين أو مستترين في عدد من الوكالات تجارية يجاوز الحد المقرر في هذه المادة .

**مادة (6)**

لا يجوز لأي شخص مزاولة الأعمال المشار إليها في المادة (2) من هذه اللائحة، إلا بعد إيداعه العقد الاتفاقي المبرمة مع الموكل، وبعد قيد اسمه في سجل الوكالات التجارية، ويكون للأشخاص المذكورين إقامة عمل الوكالات التجارية في فئة أو فئات ملعية أو خدمة متجانسة .

على أن يتم التقيد بممارسة نشاط الوكالة التجارية في الفئة أو لفئات المحددة للوكيل التجاري و على هو القواعد بالتشرف المرفق بهذه اللائحة .

**مادة (7)**

يعد بالإدارة المختصة سجل يسمى (سجل الوكالات التجارية) يُقيد به أسماء الأشخاص (الطبيعيين الاعتباريين) الذين يزاولون أعمال الوكالة التجارية، عن شركات تجارية .

**مادة (8)**

يشترط في طالب القيد في السجل المنصوص عليه في المادة السابقة ما يلي :-

- 1- أن يكون ليبي الجنسية .
- 2- أن يكون كامل الأهلية .
- 3- ألا يكون موظفاً عاماً .
- 4- ألا يكون قد حكم عليه بالإدانة في جريمة من الجرائم المنصوص عليها في الباب الثامن من قانون العقوبات أو قانون الجرائم الاقتصادية ما لم يكن قد رُك إليه اعتذار .
- 5- أن يقدم ما يفيد مزاولة النشاط المستقر أو التصدير أو النشاط الخدمي من الجهات المختصة .
- 6- وإذا كان طالب القيد شركة، فيجب أن يتوافر فيها الشروط الآتية:

أ- أن تكون مؤسسة تأسيساً صحيحاً، ب- أن تكون رأس مالها مملوكة بالكامل لليبيين، وأن يبقى كذلك طول مدة الشركة .

- 4- To provide the spare parts, equipment and tools necessary for the goods in which he deals and to repair the damaged or defective commodity free of charge during the guarantee period.
- 5- To allocate not less than (2 %) of the value of durable goods imported into the Great Jamahiriya as spare parts, equipment and tools necessary for maintenance.
- 6- To open workshops for necessary maintenance for prolonging the life of goods or renovation or removal of any defect therein, and to provide technicians for repairing the damaged or defective goods supplied thereby free of charge, provided that the guarantee certificate for the damaged or defective commodity shall be valid.
- 7- To adhere to the prices specified legally for the goods and services provided thereby.

### Article (5)

The maximum number of Trade Agencies allowed for performance by the Trade Agents within the same group or all commodity or service groups shall be as indicated against each of them:-

Natural persons: (Three Agencies)  
Partnerships: (Five Agencies)  
Private & public artificial persons: (Ten Agencies)

It is not allowed for any of the aforesaid persons to be apparent or conceal partners in a number of Trade Agencies exceeding the limit specified in this Article.

### Article (6)

It is not allowed for any person to perform the activities indicated in Article (2) hereof, except after depositing the contract or agreement signed with the principal, and recording his name in the Register of Trade Agencies. The aforesaid persons may perform the Trade Agency activity in a harmonious commodity or service group or groups, provided that adherence to performing the Trade Agency activity in the group or groups specified for the Trade Agent shall be as indicated in the list attached hereto.

### Article (7)

There shall be prepared in the competent Department a register to be called (Trade Agencies Register) for recording the names of (natural and artificial persons) who perform Trade Agency activities for trading companies.

### Article (8)

The applicant for registration in the Register specified in the preceding Article shall fulfilled the following conditions:

- 1- To hold Libyan nationality
- 2- To be fully eligible
- 3- Not to be a public employee
- 4- Not to have been convicted in a crime specified in chapter (8) of Penal Law or Economic Crimes Law, unless rehabilitated.
- 5- To submit certificate indicating performance to import, export or service activity from the competent bodies.
- 6- If the applicant for registration is a Company, it shall fulfill the following conditions:-
  - a). To be properly established.

- b). Its purposes shall include performance of all or some of the activities specified in Article (2) hereof.
- c). Its capital shall be fully owned by Libyans, and remain so during the period of the Company.



## Text 10

**مادة (9)**

يتم طلب القيد في السجل إلى الإدارة المختصة من ثلاث نسخ على الاستمارة رقم (1) مرفقاً بـ:

- 1- مستخرج رسمي من صحيفة قيد الشركة بالسجل التجاري .
- 2- شهادة تثبت أن رأس مال الشركة مملوك بالكامل للبيانيين .
- 3- شهادة من المحكمة المختصة بعدم الإفلاس .
- 4- موافقة مبدئية من الموكل لمقدم الطلب باعتباره وكيلاً عنه داخل الجماهيرية العظمى .

ويجوز للأمين إضافة شروط أخرى يراها لازمة لتنظيم أعمال الوكالات التجارية .

**مادة (10)**

تسجيل طلبات القيد في سجل بعد لذلك بالإدارة المختصة حسب تاريخ وساعة ورودها، ويعطى الطالب إيصالاً يشتمل على البيانات التالية :-

- 1- رقم الطلب وتاريخ تقديمه .
- 2- اسم طالب القيد أو المفوض بإتمام إجراءات الطلب ، وصفته ، ومحل إقامته ، واسم الجهة التي يمثلها ، وعنوانها ، ومركزها الرئيسي .
- 3- توقيع الموظف المسئول للطلب ، ويختار الإدارة المختصة .

**مادة (11)**

تحتوي الإدارة المختصة دراسة طلبات القيد ، وإيلاء أصحاحات الشأن بالقرارات التي تتخذ في شأنها خلال مدة لا تتجاوز ثلاثين يوماً من تاريخ استلامها .

**مادة (12)**

تحتوي الإدارة المختصة دراسة طلبات القيد ، وإيلاء أصحاحات الشأن بالقرارات التي تتخذ في شأنها خلال مدة لا تتجاوز ثلاثين يوماً من تاريخ استلامها .

**مادة (13)**

1- مستخرج رسمي من صحيفة قيد الشركة أو المصنع الأجنبي في السجل التجاري في البلد الذي يوجد به محل ومركز إدارته الرئيسي .

2- تعهد من الوكيل بتحويل ما يستحقه من عمولة أو مقابل إلى أحد المصارف العاملة بالجماهيرية العظمى طبقاً للتشريعات المالية النافذة .

**مادة (14)**

على الوكلاء المقيمين بسجل الوكالات إيداع الإقتنيات والعقود التي يبرمون بها مع الجهات الأجنبية خلال ثلاثين يوماً من تاريخ صدور الإنعازة نشاط الوكالة التجارية على أن يحل الوكلاء صور من الإقتنيات ، ويعتقد للتوريد ذلك خلال ثلاثين يوماً من تاريخ إبرامها إلى الإدارة المختصة وفقاً لنموذج الاستمارة رقم (2) المرفق بهذه اللائحة على أن تكون الإقتنيات والعقود مبرمة مباشرة مع الشركات أو المحال التجارية المنتجة إلا إذا ثبت أن هذه الشركات أو المحال لا تتولى توزيع منتجاتها أو تقديم خدماتها إلا عن طريق جهات أخرى .

**مادة (15)**

تخطر الإدارة المختصة طالب القيد في حالة رفض طلبه بأسباب الرفض بموجب خطاب مسجل مصحوب بعلم وصول ، ويجب أن يشتمل هذا الإخطار على بيان حق الطالب في الاستئناف إلى اللجنة المنصوص عليها في المادة (15) من هذه اللائحة ، خلال ثلاثين يوماً من تاريخ إخطاره بالرفض .

**مادة (16)**

تختص بالبت في التظلمات من قرارات رفض القيد أو الإضافة أو التعديل لجنة تشكل على النحو الآتي :-

- 1- رئيسها :-
- 2- مدير الإدارة العامة للشركات والتسجيلات التجارية .
- 3- رئيس غرفة التجارة والصناعة المقعد بها مقدم الطلب .
- 4- عضو من أعضاء اللجنة .
- 5- عضو من أعضاء اللجنة .
- 6- عضو من أعضاء اللجنة .
- 7- عضو من أعضاء اللجنة .
- 8- عضو من أعضاء اللجنة .
- 9- عضو من أعضاء اللجنة .
- 10- عضو من أعضاء اللجنة .
- 11- عضو من أعضاء اللجنة .
- 12- عضو من أعضاء اللجنة .
- 13- عضو من أعضاء اللجنة .
- 14- عضو من أعضاء اللجنة .
- 15- عضو من أعضاء اللجنة .
- 16- عضو من أعضاء اللجنة .
- 17- عضو من أعضاء اللجنة .
- 18- عضو من أعضاء اللجنة .
- 19- عضو من أعضاء اللجنة .
- 20- عضو من أعضاء اللجنة .
- 21- عضو من أعضاء اللجنة .
- 22- عضو من أعضاء اللجنة .
- 23- عضو من أعضاء اللجنة .
- 24- عضو من أعضاء اللجنة .
- 25- عضو من أعضاء اللجنة .
- 26- عضو من أعضاء اللجنة .
- 27- عضو من أعضاء اللجنة .
- 28- عضو من أعضاء اللجنة .
- 29- عضو من أعضاء اللجنة .
- 30- عضو من أعضاء اللجنة .
- 31- عضو من أعضاء اللجنة .
- 32- عضو من أعضاء اللجنة .
- 33- عضو من أعضاء اللجنة .
- 34- عضو من أعضاء اللجنة .
- 35- عضو من أعضاء اللجنة .
- 36- عضو من أعضاء اللجنة .
- 37- عضو من أعضاء اللجنة .
- 38- عضو من أعضاء اللجنة .
- 39- عضو من أعضاء اللجنة .
- 40- عضو من أعضاء اللجنة .
- 41- عضو من أعضاء اللجنة .
- 42- عضو من أعضاء اللجنة .
- 43- عضو من أعضاء اللجنة .
- 44- عضو من أعضاء اللجنة .
- 45- عضو من أعضاء اللجنة .
- 46- عضو من أعضاء اللجنة .
- 47- عضو من أعضاء اللجنة .
- 48- عضو من أعضاء اللجنة .
- 49- عضو من أعضاء اللجنة .
- 50- عضو من أعضاء اللجنة .
- 51- عضو من أعضاء اللجنة .
- 52- عضو من أعضاء اللجنة .
- 53- عضو من أعضاء اللجنة .
- 54- عضو من أعضاء اللجنة .
- 55- عضو من أعضاء اللجنة .
- 56- عضو من أعضاء اللجنة .
- 57- عضو من أعضاء اللجنة .
- 58- عضو من أعضاء اللجنة .
- 59- عضو من أعضاء اللجنة .
- 60- عضو من أعضاء اللجنة .
- 61- عضو من أعضاء اللجنة .
- 62- عضو من أعضاء اللجنة .
- 63- عضو من أعضاء اللجنة .
- 64- عضو من أعضاء اللجنة .
- 65- عضو من أعضاء اللجنة .
- 66- عضو من أعضاء اللجنة .
- 67- عضو من أعضاء اللجنة .
- 68- عضو من أعضاء اللجنة .
- 69- عضو من أعضاء اللجنة .
- 70- عضو من أعضاء اللجنة .
- 71- عضو من أعضاء اللجنة .
- 72- عضو من أعضاء اللجنة .
- 73- عضو من أعضاء اللجنة .
- 74- عضو من أعضاء اللجنة .
- 75- عضو من أعضاء اللجنة .
- 76- عضو من أعضاء اللجنة .
- 77- عضو من أعضاء اللجنة .
- 78- عضو من أعضاء اللجنة .
- 79- عضو من أعضاء اللجنة .
- 80- عضو من أعضاء اللجنة .
- 81- عضو من أعضاء اللجنة .
- 82- عضو من أعضاء اللجنة .
- 83- عضو من أعضاء اللجنة .
- 84- عضو من أعضاء اللجنة .
- 85- عضو من أعضاء اللجنة .
- 86- عضو من أعضاء اللجنة .
- 87- عضو من أعضاء اللجنة .
- 88- عضو من أعضاء اللجنة .
- 89- عضو من أعضاء اللجنة .
- 90- عضو من أعضاء اللجنة .
- 91- عضو من أعضاء اللجنة .
- 92- عضو من أعضاء اللجنة .
- 93- عضو من أعضاء اللجنة .
- 94- عضو من أعضاء اللجنة .
- 95- عضو من أعضاء اللجنة .
- 96- عضو من أعضاء اللجنة .
- 97- عضو من أعضاء اللجنة .
- 98- عضو من أعضاء اللجنة .
- 99- عضو من أعضاء اللجنة .
- 100- عضو من أعضاء اللجنة .

**مادة (17)**

يختص اللجنة التظلمات أمين سر يختاره رئيسها من بين العاملين بأمانة اللجنة الشعبية العامة للاقتصاد .

**Article (9)**

The application for registration shall be submitted to the competent Department in (3) three copies in form (1), together with the supporting documents for correctness of data therein, especially the following:-

- 1- Official extract from the page of registration of the Company in the Commercial Register.
- 2- Certificate proving that the Company's capital is fully owned by Libyans.
- 3- Certificate from the competent Court for unbankruptcy.
- 4- Preliminary approval for the principal to the applicant as an Agent for him in the Great Jamahiriya.

The Secretary may add other conditions as deemed necessary for organizing the Trade Agency activities.

**Article (10)**

The applications for registration shall be recorded in the relevant Register in the competent Department by date and time of delivery thereof. The applicant shall be given a receipt including the following data:-

- 1- Application number and date of submission thereof.
- 2- Name of the applicant or authorized person for finalizing the procedures for the application, his title & place of residence and the name of the body he represents, its address and main domicile.
- 3- Signature of the official receiving the application and stamp of the competent Department.

**Article (11)**

The competent Department shall study the applications for registration and inform the persons concerned of the decisions taken in respect thereof within a period not exceeding thirty days from the date of receipt thereof.

**Article (12)**

Anyone whose name is recorded in the aforesaid Register shall deposit within thirty days from the date of registration, the following documents:-

- 1- Official extract from the page of registration of the Company or foreign factory in the Commercial Register in the country where the place or main domicile of his management exists.
- 2- Undertaking by the Agent to transfer the due commission or fees to a Bank operating in the Great Jamahiriya under effective financial legislations.

**Article (13)**

The Agents recorded in the Trade Agency Register shall deposit the agreements and contracts signed with foreign bodies within thirty days from the date of issue of permission for performing the Trade Agency activity, provided that the Agents shall refer copies of the agreement and contracts for supplies within thirty days from the date of signing them to the competent Department as per form No. (2) attached hereto, and the contracts or agreement shall be signed directly, with the trading companies or shops, unless it is proved that such companies or shops do not distribute their products or provide their services except through other bodies.

**Article (14)**

The competent Department shall notify the applicant for registration in case of rejection of his application of the reasons for rejection by registered letter with acknowledged receipt. Such notice shall indicate the right of the applicant to complain or appeal to the Committee specified in Article (15) hereof, within thirty days from the date of notifying him of rejection.

**Article (15)**

The complaints against the decisions for rejection of registration, addition or amendment shall be decided by a Committee to be formed as follows:-

- A Judge whose grade is not less than Counselor in the Appeal Court - Chairman.
- Director of Companies & Commercial Registration Department - Member.
- Chairman of Chamber of Commerce and Industry where the applicant is registered - Member.
- A legal member - Member.

The meeting of the Committee shall be only valid in presence of its Chairman and two members thereof at least. The Committee shall issue its decisions by majority of votes. In case of equal voting, the Chairman shall have a casting vote.

The Complaints/Appeal Committee shall have a Secretary to be selected by its Chairman from among the employees of Secretariat of General People's Committee for Economy & Commerce.





## Text 12

**مادة (22)**

يشترط لتحويل الوكالة التجارية أو التنازل عنها ما يلي :

- موافقة كتابية من الموكل .
- تسديد من الوكيل بتحمل المسؤولية عن التزامات السابقة على التحويل أو التنازل .

ويقدم طلب تحويل الوكالة التجارية أو التنازل عنها على نموذج الاستمارة رقم (4) المرفقة بهذه اللائحة وتقوم الإدارة المختصة بعد التأكد من استيفاء الشروط اللازمة بالتأشير بذلك في سجل الوكالة .

**مادة (23)**

تلك الشخص تم قيد اسمه في سجل الوكالات التجارية أن يطلب في أي وقت إدخال إضافة أو تعديل على ما يتعلق به من بيانات في السجل .

ويقدم طلب الإضافة أو التعديل من ثلاث نسخ على نموذج الاستمارة رقم (5) المرفق بهذه اللائحة ،

تحتوي الطلبات في دفاتر خاصة بأرقام متتابعة حسب تواريخ تقديمها ، ويمنح الطالب أيضاً بالاستلام

سجل على البيانات التالية :-

- 1- تاريخ تقديم الطلب .
- 2- اسم الجهة ، وموطنها القانوني ، ورقم قيدها في سجل الوكالات التجارية .
- 3- توقيع الموظف المسئول للطلب .

**مادة (24)**

تحدد الرسوم اللازمة للتقديم ، وتجديده ، وتكوين البيانات وغيرها من الإجراءات على النحو الآتي :-

- 1- رسوم طلبات التسجيل : 150 دينار ليبي
- 2- رسوم طلبات التجديد : 100 دينار ليبي
- 3- رسوم طلبات التعديل : 70 دينار ليبي
- 4- رسوم طلبات الإضافة : 50 دينار ليبي
- 5- رسوم طلبات التنازل : 50 دينار ليبي
- 6- رسوم طلبات التأسيس : 50 دينار ليبي

**مادة (25)**

أن تشمل شهادة الضمان للمبلغ المعمرة على البيانات التالية :-

- نوع السلعة .
- الجهة المنتجة .
- تاريخ الصنع .
- تاريخ البيع .
- اسم الوكيل .
- اسم المشتري .
- مدة الضمان .

**مادة (26)**

يجب على الشخص المعقد بسجل الوكالات التجارية توفير محل مناسب لممارسة نشاطه والتقديم التجاري المختص خلال ستة أشهر من تاريخ القيد .

**مادة (27)**

تسجل الوكالة التجارية ، ويثبت قيد الوكيل بقرار من اللجنة في إحدى الحالات الآتية :-

- 1- إعلان الوكيل عن إفلاس تجاري .
- 2- إدانة الوكيل في جريمة اقتصادية أو أي جريمة أخرى تعين النية أو الإمانة بما لم يرد إليه إعتباره .
- 3- الحكم على الوكيل المخاري في مخالفة أو أكثر لأحكام التشريعات السطة لعمل الوكالة التجارية .
- 4- توقف عن العمل كوكيل تجاري ، أو عدم البدء في ممارسة عمل الوكالة التجارية لمدة سنة .
- 5- إقرار الوكيل بانه غير قادر على الوفاء بالتزاماته التجارية .
- 6- إقرار الوكيل بانه غير قادر على الوفاء بالتزاماته التجارية .
- 7- إقرار الوكيل بانه غير قادر على الوفاء بالتزاماته التجارية .
- 8- إقرار الوكيل بانه غير قادر على الوفاء بالتزاماته التجارية .
- 9- إقرار الوكيل بانه غير قادر على الوفاء بالتزاماته التجارية .

بعد القيد التجاري بعد القيد شروط من الشروط التي تتطلبها التشريعات النافذة في شأن الوكالات التجارية .

تحت أن القيد تم على غير مقتضى من القانون أو بناء على بيانات غير صحيحة .

تختلف الوكيل عن إيداع العقود ، والاتفاقيات خلال المدة المحددة في هذه اللائحة .

28. 2. 1

### Article (22)

It is required for transfer or assignment of the Trade Agency to fulfill the following conditions:-

- Written consent of the principal.
- Undertaking by the Agent to bear the responsibility for the previous contracts for transfer or assignment.

The application for transfer or assignment of the Trade Agency shall be submitted on form No. (4) attached hereto. The competent Department shall, after fulfilling the necessary conditions, endorse that in the Register of the Trade Agents.

### Article (23)

Each person whose name is recorded in the Trade Agency Register may ask at anytime for introducing addition or amendment of the relevant data in the Register.

The application for addition or amendment shall be submitted in three copies of Form No. (5) attached hereto. The applications shall be recorded in special books with serial numbers as per dates of submission thereof. The applicant shall be given a receipt including the following data:-

- Date of submission of the application.
- Name of the applicant body, its legal domicile and registration number in the Trade Agency Register.
- Signature of the official receiving the application.

### Article (24)

The necessary fees for registration and renewal thereof, and recording of the data and other procedures shall be specified as follows:-

- Fees for applications for registrations: LD. 150.
- Fees for applications for renewal: LD. 100
- Fees for applications for amendment: LD. 70
- Fees for applications for addition: LD. 50
- Fees for applications for assignment: LD. 50
- Fees for applications for endorsement: LD. 50
- Fees for applications for depositing: LD. 40
- Fees for applications for seeing the records: LD. 20
- Fees for applications for complaints/appeals: LD. 20.

### Article (25)

The certificate of guarantee for the durable goods shall include the following data:-

- Type of commodity.
- Producing body
- Date of manufacture
- Date of sale
- Name of the Trade Agent.
- Name of buyer
- Guarantee period

### Article (26)

The person recorded in the Trade Agency Register shall provide a suitable place for performing his activity and recording in the competent Commercial Register within six months from date of registration.

### Article (27)

The Trade Agency shall be cancelled and the registration of the Trade Agent shall be deleted by decision of the Committee in any of the following cases:-

- Declaration of bankruptcy of the Trade Agent.
- Condemnation of the Trade Agent in an economic crime or any other crime involving commitment or dishonesty, unless rehabilitated.
- Conviction of the Trade Agent in a contravention or more to the provisions of the legislations organizing the Trade Agency activities.
- Suspension of work as Trade Agent or unstarting work of Trade Agency for a period of one year from the date of registration.
- If the Trade Agent losses, after registration, a condition required by the effective legislation for Trade Agencies.
- If it is proved that the registration was made contrary to the Law or on the basis of incorrect data.
- If the Agent fails in depositing the contracts and agreements within the period specified herein.



**مادة (28)**  
يجوز بقرار من الأمين إضافة أو تعديل الفئات السملعية أو الخدمية العرفقة ببيعة اللاتحة .

**مادة (29)**  
يصدر بإضفاء صفة مأموري الضبط القضائي لموظفي الإدارة المختصة قرار من أمانة للجنة الشعبية العامة ويكون لهم ضبط ، وإببات الجرائم والمخالفات ، التي ترتكب بالمخالفة لأحكام القانون رقم (6) لسنة 1372 ودر بشأن تنظيم أعمال الوكالات التجارية ولائحته التنفيذية .

ويكون لهم في سبيل أداء واجبه حق دخول المحال ، والإطلاع على الفناظر والمستندات والأوراق ، وإعالة المخالفين للمطلات المختصة .

**المشارة رقم (1)**  
**اللجنة الشعبية العامة للاقتصاد والتجارة**

الرقم المسلسل للطلب \_\_\_\_\_ تاريخ تقديم الطلب \_\_\_\_\_ / \_\_\_\_\_

طلب قيد في سجل الوكالات التجارية

الخ / مدير عام الإدارة العامة للشركات والتسجيلات التجارية .

بند المحبة

إتطلب قيد اسمي ، أو اسم ..... في سجل الوكالات

والسلام عليكم ورحمة الله وبركاته

توقيع طالب القيد ومقدم الطلب

.....

1- اسم طالب القيد ، ولقبه ، وجنسيته ، ومهنته ، ومحل إقامته ، أو اسم الشركة التي يرغب في تأسيسها ، وعنوانها ، ونوعها ، وغرضها ، ومركزها العام ، ورقم تسجيلها في السجل التجاري .

.....

2- الصفة التي يتم بها الطلب

.....

3- اسم شركة ، أو المصنع الأجنبي المطلوب تسجيل الوكالة عنه ، وعنوان مركزه الرئيسي

.....

4- تاريخ العقد المبرم بين الشركة ، أو المصنع الأجنبي ، وبين طالب القيد ، ومد سريته

.....

5- نوع السلع ، أو الخدمات موضوع عقد الوكيل

.....

**بيان بالمستندات ، والأوراق المرفقة بالطلب**

م	الموضوع	التاريخ

The commodity or service groups attached hereto may be added or amended by decision of the Secretary.

Authorization for the capacity of Law Enforcement Officers to the officials of the competent Department shall be issued by decision of Secretariat of General People's Committee, who shall have the power to arrest and prove the crimes and contraventions committed against the provisions of Law No. (6) of 1372 PD. (2004) for organizing the Trade Agency activities and its executive regulation. They shall have the right, for performing their duties, to enter into the places and see the books, documents and papers and to refer the contraveners to the competent authorities.

S.N	Subject/Description	Date

## Text 15

استمارة رقم (2)  
اللجنة الشعبية العامة للاقتصاد والتجارة

الرقم المسلسل للطلب: \_\_\_\_\_ تاريخ تقديم الطلب: \_\_\_\_/\_\_\_\_/\_\_\_\_

طلب إيداع صورة اتفاق ، أو عقد وكالة  
الأخ / مدير عام الإدارة العامة للشركات والتسجيلات التجارية .  
بعد التحية

الطلب اتخاذ الإجراء اللازم نحو إيداع الاتفاق / العقد المرفق وفق البيانات الموضحة أدناه حسب  
الأصول القانونية .  
والسلام عليكم ورحمة الله وبركاته

توقيع مقدم الطلب  
.....

البيانات:

1- اسم طالب الإيداع ، ولقبه ، وجنسيته ، ومهنته ، ومحل إقامته ، أو اسم الشركة صاحب  
الإجراء ونوعها ، وغرضها ، ومركزها الرئيسي ، ورقم قيدها في السجل التجاري .  
.....

2- تاريخ الاتفاق ، أو العقد المطلوب إيداعه .....  
3- موضوع الاتفاق ، أو العقد .....  
4- رقم تسجيل طالب الإيداع ، في سجل الوكالات التجارية .....  
5- المستندات المرفقة :  
أ- التاريخ .....  
ب- التاريخ .....  
ج- التاريخ .....

استمارة رقم (3)  
اللجنة الشعبية العامة للاقتصاد والتجارة

الرقم المسلسل للطلب: \_\_\_\_\_ تاريخ تقديم الطلب: \_\_\_\_/\_\_\_\_/\_\_\_\_

طلب إطلاع ، منح إفادة  
مكتب TUMI LAW FIRM  
مدير عام الإدارة العامة للشركات والتسجيلات التجارية .  
لتحية

الطلب اتخاذ اللازم بشأن الإطلاع ، ومنح شهادة وفقاً للبيانات الموضحة أدناه ، حسب الأصول  
نية .  
والسلام عليكم ورحمة الله وبركاته

توقيع مقدم الطلب  
.....

1- اسم الطالب ، ولقبه ، وجنسيته ، ومهنته ، ومحل إقامته ، أو اسم الشركة التي يمثلها وعنوانها  
ونوعها ، وغرضها ، ومركزها العام ، ورقم تسجيلها في السجل التجاري .  
أ- .....  
ب- .....  
ج- .....  
2- رقم قيد الطالب ، أو الشركة في سجل الوكالات التجارية .....  
3- موضوع الإطلاع أو الشهادة المطلوبة .....

Form No. (2)

**The General People's Committee for  
Economy & Commerce**

Application S.N.: .....  
Date of Submission of the application: .....

**Application for Depositing of Trade Agency Agreement or Contract**

To: The Director – General of Companies and Commercial  
Registration Department

Greetings,

You are kindly requested to take the necessary procedures for  
depositing the Agreement/Contract enclosed as per the data indicated  
below and legal practice.

With best regards.

Signature of Applicant  
.....

Data:

1- Applicant's name, surname, nationality, occupation, place of  
residence, or name of the Company concerned, its type,  
purpose, main office, and Reg. No. in the Commercial Register.  
.....

2- Date of the Agreement or Contract to be deposited: .....

3- Object of the Agreement or Contract: .....

4- Reg. No. of the applicant in Trade Agency Register: .....

5- **The Enclosed Documents**  
a). ..... Date: .....  
b). ..... Date: .....  
c). ..... Date: .....

Form No. (3)

**The General People's Committee for  
Economy & Commerce**

Application S.N.: .....  
Date of Submission of the application: .....

**Application for Seeing the Register and Granting Certificate**

To: The Director – General of Companies and Commercial  
Registration Department

Greetings,

You are kindly requested to take the necessary procedures for seeing  
the Register and granting certificate as per the data indicated below  
and legal practice.

With best regards.

Signature of Applicant  
.....

1- Applicant's name, surname, nationality, occupation, place of  
residence, or name of the Company represented thereby, its  
address, type, main office, and Reg. No. in the Commercial  
Register.  
a). .....  
b). .....  
c). .....

2- Applicant's or Company's Reg. No. in the Trade Agency Register:  
.....

3- Object of seeing or required certificate: .....



## Text 16

استمارة رقم (4)  
اللجنة الشعبية العامة للاقتصاد والتجارة

تاريخ تقديم الطلب: ..... / ..... / .....

المسلسل للطلب: .....

طلب تحويل ، تنازل ، إلغاء اتفاق ، أو عقد تجارية

مكتب المحاماة TUMI LAW FIRM

مدير عام الإدارة العامة للشركات والتسجيلات التجارية .

التحية

الطلب اتخاذ الإجراء الوارد في هذا الطلب وفق البيانات ، والمستندات المرفقة حسب الأصول .

والسلام عليكم ورحمة الله وبركاته

توقيع مقدم الطلب

1- اسم مقدم الطلب ، ولقبه ، وجنسيته ، ومهنته ، ومحل إقامته ، أو اسم الشركة التي يمثلها وعنوانها ، ومركزها العام ، ورقم تسجيلها في السجل التجاري .

2- اسم المحال ، أو المتنازل إليه ، وجنسيته .

3- تاريخ الاتفاق ، أو العقد المطلوب تحويله ، أو التنازل عنه ، أو إلغائه .

4- رقم تسجيل الطلب ، في سجل الوكالات التجارية

5- بيان بالمستندات ، والأوراق المرفقة :

رقم المستند	موضوعه	تاريخه
أ-	.....	.....
ب-	.....	.....

استمارة رقم (5)  
اللجنة الشعبية العامة للاقتصاد والتجارة

تاريخ تقديم الطلب: ..... / ..... / .....

المسلسل للطلب: .....

طلب إضافة ، أو تعديل في سجل الوكالات التجارية

مكتب المحاماة TUMI LAW FIRM

مدير عام الإدارة العامة للشركات والتسجيلات التجارية .

التحية

الطلب اتخاذ الإجراء بشأن تعديل / إضافة البيانات المذكورة فيما بعد بسجل الوكالات التجارية حسب الأصول .

والسلام عليكم ورحمة الله وبركاته

توقيع مقدم الطلب

1- اسم مقدم الطلب ، ولقبه ، وجنسيته ، ومهنته ، ومحل إقامته ، أو اسم الشركة التي يمثلها وعنوانها ، ونوعها ، وغرضها ، ومركزها العام ، ورقم تسجيلها في السجل التجاري .

2- رقم قيد الطلب ، أو الشركة في سجل الوكالات التجارية .

3- موضوع التعديل ، أو الإضافة المطلوبة .

بيان بالمستندات ، والأوراق المرفقة بالطلب

رقم	الموضوع	التاريخ
.....	.....	.....
.....	.....	.....

Form No. (4)  
**The General People's Committee for  
Economy & Commerce**

Application S.N.: .....

Date of Submission of the application: .....

**Application for Transfer, Assignment, Cancellation of Trade  
Agency Contract or Agreement**

To: The Director – General of Companies and Commercial  
Registration Department

Greetings,

You are kindly requested to take the necessary procedures indicated in this application as per the data & documents enclosed and legal practice.

With best regards.

Signature of Applicant

1- Applicant's name, surname, nationality, occupation, place of residence, or name of the Company represented thereby, its address, main office, and Reg. No. in the Commercial Register .....

2- Name of the Transferer/Assignor or Assignee and his nationality: .....

3- Date of the Agreement or Contract to be transferred, assigned or cancelled .....

4- Applicant's Reg. No. in the Trade Agency Register .....

5- Data on the enclosed documents and papers

Document Number	Object	Date
a)	.....	.....
b)	.....	.....

Form No. (5)  
**The General People's Committee for  
Economy & Commerce**

Application S.N.: .....

Date of Submission of the application: .....

**Application for Addition or Amendment in the  
Trade Agency Register**

To: The Director – General of Companies and Commercial  
Registration Department

Greetings,

You are kindly requested to take the necessary procedures for amendment/addition of data indicated below in the Trade Agency Register as per legal practice.

With best regards.

Signature of Applicant

1- Applicant's name, surname, nationality, occupation, place of residence, or name of the Company represented thereby, its address, type, purpose, main office, and Reg. No. in the Commercial Register .....

2- Reg. No. of the applicant or Company in the Trade Agency Register .....

3- Object/the required amendment or addition .....

**List of the Documents & Papers Enclosed  
with the Application**

S.N	Subject/Description	Date
.....	.....	.....
.....	.....	.....

## Text 17

قرار اللجنة الشعبية العامة للاقتصاد والتجارة  
رقم ( 52 ) لسنة 1372 و.ر. (2004 مسيحي).  
بشأن الفئات السلعية التي يجوز استيرادها من قبل أدوات الاستيراد

اللجنة الشعبية العامة للاقتصاد والتجارة :

بعد الاطلاع على القانون رقم (1) لسنة 1369 و.ر. بشأن المؤتمرات الشعبية واللجان الشعبية ولائحته التنفيذية .

والقانون التجاري الليبي والقوانين المعدلة و المكمله له .

و القانون رقم (65) لسنة 1970 ف. بتقرير بعض الأحكام الخاصة بالتجار والشركات التجارية والإشراف عليها ولائحته التنفيذية.

و القانون رقم (64) لسنة 1971 ف. في شأن الاستيراد .

و القانون رقم (21) لسنة 1369 و.ر. بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية المعدل بالقانون رقم (1) لسنة 1372 و.ر. ولائحته التنفيذية .

و القانون رقم (6) لسنة 1372 و.ر. بشأن تنظيم عمل الوكالات التجارية ولائحته التنفيذية .

و قرار اللجنة الشعبية العامة للتخطيط والاقتصاد والتجارة رقم (15) لسنة 1425 ميلادية بدمج الفئات السلعية التي يجوز استيرادها من قبل أدوات الاستيراد .

و قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (2) لسنة 1370 و.ر. بشأن تنظيم الاستيراد والتصدير .

و قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (2) لسنة 1371 و.ر. بتعديل بعض أحكام القرار رقم (2) لسنة 1370 و.ر. بشأن تنظيم الاستيراد والتصدير .

و قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (3) لسنة 1371 و.ر. بتعديل بعض أحكام القرار رقم (15) لسنة 1425 ميلادية بدمج الفئات السلعية التي يجوز استيرادها من قبل أدوات الاستيراد .

و قرار أمين اللجنة الشعبية العامة للاقتصاد والتجارة رقم (21) لسنة 1371 و.ر. بإضافة فئة سلعية إلى القرار رقم (15) لسنة 1425 ميلادية بدمج الفئات السلعية التي يجوز استيرادها من قبل أدوات الاستيراد .

وعلى محضر اجتماع اللجنة الشعبية العامة للاقتصاد والتجارة العادي الأول المنعقد في مدينة سرت بتاريخ 2004/11/27 مسيحي .

### قررت مادة (1)

تلتزم كافة قنوات الاستيراد المحددة قانوناً باستيراد السلع والبضائع حسب الفئات السلع التالية :

#### الفئة (1)

( الملابس - المنسوجات - المصنوعات الجلدية - مواد التنظيف والزيينة والخردوات ) :

- أ- الملابس الداخلية والخارجية ومكملاتها .
- ب- الأحذية ، الحقائق ، المصنوعات الجلدية بجميع أنواعها .
- ج- الأقمشة ، أغذية الأسرة ، الستائر ومستلزماتها ، أغذية المناضد البطاطين الحرير ، خيوط الغزل ، مستلزمات الحياكة والتطريز والسجاد .
- د- الصابون ، المظهورات ، معدات التنظيف اليدوية ، ورنيش تلميع الأرضيات والمنظفات الأخرى ، المبيدات الحشرية المنزلية .
- هـ- الروائح والعطور والشامبوات ، معاجين الحلاقة والأسنان معدات وأدوات الحلاقة ، مزيل العرق ، فرش الأسنان مستحضرات ولوازم التجميل ومقاص الشعر ، قلامات الأظافر والأمشاط وغيرها من أدوات التجميل ، المناديل الورقية كريم البشرة والشعر ، الخردوات .
- و- الزهور والورود الطبيعية ، البخور ، السواك ، غيرها من المواد العطرية.

## Decision of General People's Committee for Economy & Commerce No. (52) of 1372 PD. (2004) regarding the Commodity Groups allowed for Import by the Authorized Bodies

The General People's Committee for Economy & Commerce,

After perusal of the Libyan Commercial Law and its amending & complementary Laws,

Law No. (65) of 1970 for specifying certain provisions for merchants and trading companies, and supervision thereof, and its executive regulation,

Law No. (64) of 1971 regarding import,

Law No. (1) 1369 PD. (2004) regarding People's Congresses & Committees, and its executive regulation.

Law No. (21) of 1369 PD. for Specifying certain provisions for performing economic activities, as amended by Law No. (1) of 1372 PD. (2004), and its executive regulation,

Law No. (6) of 1372 PD. (2004) for organizing Trade Agency activities, and its executive regulation,

Decision of General People's Committee for Planning, Economy & Commerce, No. (15) of 1425 P.B. (1995) for merging certain commodity groups allowed for import by authorized importers,

Decision of General People's Committee for Economy & Commerce, No. (2) for organizing import and export,

Decision of General People's Committee for Economy & Commerce No. (2) for amending certain provisions of decision No. (2) of 1370 P.D. (2002) for organizing import & export,

Decision of General People's Committee for Economy & Commerce No. (3) of 1371 PD. (2003) for amending certain provisions of decision No. (15) of 1425 P.B. (1995) for merging commodity groups allowed for import by the authorized bodies.

Decision of Secretary of General People's Committee for Economy & Commerce, No. (21) of 1371 PD. (2003) for adding a commodity group to decision No. (15) of 1425 P.B. (1995) for merging commodity groups allowed for import by authorized bodies, and

Minutes of the 1<sup>st</sup> ordinary meeting of General People's Committee for Economy & Commerce, held in Sirte on 27.11.2004,

### Do hereby decide:

#### Article (1)

All import channels legally specified shall import the commodities and goods as per the following commodity groups:

#### Group (1)

Clothes, textiles, leather products, cleaning materials, cosmetics and haberdashery

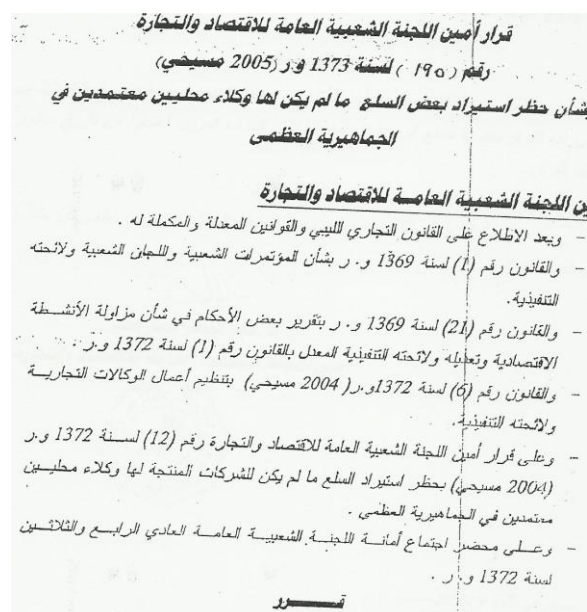
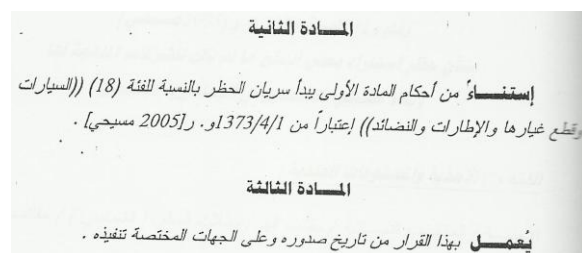
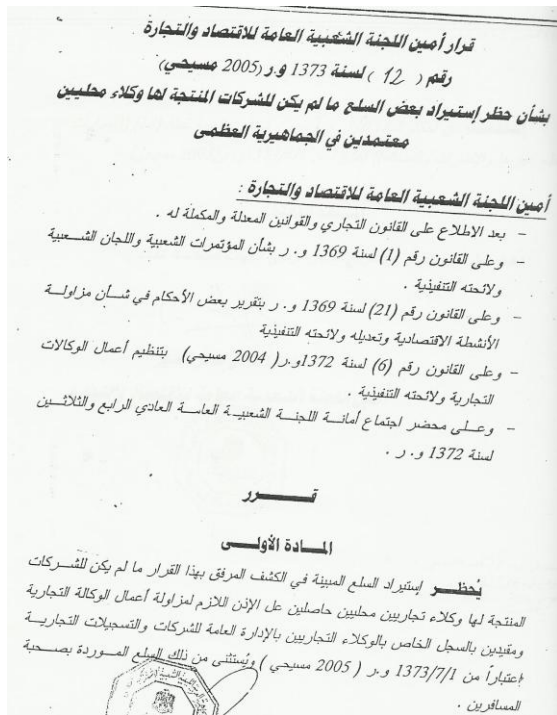
- Underwear, external clothes and their accessories.
- Shoes, handbags/suitcases and leather products of all kinds.
- Textiles, bed covers, curtains and their necessities, table covers, blankets, silk, yarn/spinning threads, tailoring and embroidery necessities and carpets.
- Soap, disinfectants, hand cleaning equipment, floor polishing varnish and other detergents and domestic insecticides.
- Perfumes & shampoos, shaving cream, tooth paste, hairdressing equipment & tools, deodorants, cosmetics, hair scissors, nail cutters, combs and other cosmetic tools, paper napkins, skin and hair cream, haberdashery.
- Natural flowers & roses, scent, tooth cleaner and other perfumed materials.



## Text 18

<p><b>مادة الثانية</b></p> <p>تعتبر السلع الواردة بالفئات المذكورة أعلاه على سبيل المثال لا الحصر وتتولى الإدارة المختصة باللجنة الشعبية العامة للاقتصاد والتجارة تصنيف وضم أي سلع غير واردة ضمن هذه الفئات حسب الفئة السلعية المتجانسة معها مع مراعاة طبيعة السلعة والغرض المعدة للاستخدام فيه .</p> <p><b>مادة الثالثة</b></p> <p>يقتصر نشاط كل أداة من أدوات الاستيراد على فئة واحدة فقط من الفئات الواردة ذكرها في المادة الأولى من هذا القرار .</p> <p>ولا يجوز لها إجراء أي تعديل على نشاطها إلا بعد أخذ إذن من أمين اللجنة الشعبية للشعبية المختصة .</p> <p><b>مادة الرابعة</b></p> <p>يؤذن لأدوات الاستيراد المؤسسة قبل سريان هذا القرار ممن تمارس أنشطة تم دمجها أو تعديلها بموجب أحكامه ممارسة جميع الأنشطة المدمجة أو المعدلة داخل الفئة الواحدة .</p> <p>على أن تجري التعديلات اللازمة على عقود تأسيسها وأنظمتها الأساسية بما يتسجم وأحكام هذا القرار وذلك خلال مدة أقصاها ثلاثة أشهر من تاريخ صدوره .</p> <p><b>مادة الخامسة</b></p> <p>تلتزم أدوات الاستيراد المشار إليها في المادة السابقة بتدوين التعديلات الطارئة على أنظمتها الأساسية في كل من السجل التجاري وسجل المستوردين المقيدة بهما وذلك خلال ثلاثون يوماً من إجراء تلك التعديلات .</p> <p><b>مادة السادسة</b></p> <p>تلتزم أدوات الاستيراد المخولة باستيراد الآلات والمعدات والمركبات والسلع المعمرة الأخرى بتوفير قطع الغيار اللازمة لصيانة وإدامة هذه السلع وفتح ورش خاصة لصيانتها .</p>	<p><b>Article (2)</b></p> <p>The commodities indicated in the aforesaid groups are for example without limitation. The competent Department in the General People's Committee for Economy &amp; Commerce shall classify and include any commodities unindicated in these groups, as per the commodity group harmonious therewith, taking into consideration the nature of the commodity and the purpose of use thereof.</p> <p><b>Article (3)</b></p> <p>The activity of each import body shall be confined to one group only of the groups indicated in Article (1) hereof.</p> <p>It is not allowed to make any amendment to its activity, except after taking permission of the Secretary of People's Committee for the competent Shaabia (Municipality).</p> <p><b>Article (4)</b></p> <p>It is permitted for the import bodies established before the effectiveness of this decision, performing activities merged or amended under its provisions to perform all activities merged or amended within one group, provided the necessary amendment shall be introduced into their memorandum and Articles of Association, as compatible with the provisions of this decision, within a maximum period of three months from the date of its issue.</p> <p><b>Article (5)</b></p> <p>The import bodies indicated in the preceding Article shall record the amendment to their Articles of Association &amp; in both the Commercial Register and Importers Register in which they are recorded, within thirty days from the date such amendments.</p> <p><b>Article (6)</b></p> <p>The import bodies authorized for import of machinery, equipment and other durable commodities shall provide the necessary spare parts for maintenance and durability of such commodities and to open special workshops for maintenance thereof.</p> <p><b>Article (7)</b></p> <p>The Secretary of General People's Committee for Economy &amp; Commerce may add new groups unmentioned in this decision and merge or amend them as required for public interest.</p> <p><b>Article (8)</b></p> <p>Decision of General People's Committee for Planning, Economy &amp; Commerce No. (15) of 1425 P.B. (1995) and its amendments indicated in the preamble of this decision shall be superseded.</p> <p><b>Article (9)</b></p> <p>This decision shall come into force from the date of its issue. The competent bodies shall implement it, and shall be published in the Procedures Encyclopaedia.</p> <p style="text-align: right;">(Sd. &amp; stamped) The General People's Committee for Economy &amp; Commerce</p> <p>Issued on 16.12.2004.</p>
<p><b>مادة السابعة</b></p> <p>يجوز لأمين اللجنة الشعبية العامة للاقتصاد والتجارة إضافة فئات جديدة لم يرد ذكرها بهذا القرار كما يجوز له دمجها أو تعديلها وفقاً لما تقتضيه المصلحة العامة.</p> <p><b>مادة الثامنة</b></p> <p>يلغى قرار اللجنة الشعبية العامة للتخطيط والاقتصاد والتجارة رقم (15) لسنة 1425 ميلادية وتعديلاته المشار إليها في ديباجة هذا القرار .</p> <p><b>مادة التاسعة</b></p> <p>يعمل بهذا القرار من تاريخ صدوره ، وعلى الجهات المختصة تنفيذه وينشر في مدونة الإجراءات .</p> <p>اللجنة الشعبية العامة للاقتصاد والتجارة</p> <p>صدر في: 2004/12/16 مسيحي . الموافق: 1372/12/16 و.ر .</p>	

## Text 19



### **Decision of Secretary of General People's Committee for Economy & Commerce No. (12) of 1373 PD. (2005) for Prohibition of Import of certain Commodities, unless the producing companies thereof have local authorized Trade Agents in the Great Jamahiriya.**

The Secretary of General People's Committee for Economy & Commerce After perusal of Commercial Law, and its amending and complementary laws,

Law No. (1) of 1369 PD. (2001) regarding People's Congresses and Committees, and its executive regulation,

Law No. (21) of 1369 PD. (2001) for specifying certain provisions for performing economic activities, its amendment and executive regulation,

Law No. (6) of 1372 PD. (2004) for organizing Trade Agency activities, and its executive regulation, and

Minutes of the 34<sup>th</sup> Ordinary Meeting of Secretariat of General People's Committee for 1372 PD. (2004)

**Do hereby decide:**

#### **Article (1)**

It is prohibited to import the commodities indicated in the list attached hereto, unless the producing companies thereof have local Trade Agents holding the necessary permission for performing Trade Agency activities, and recorded in the Register of Trade Agents in Companies and Commercial Registration Department, as from 01.07.2005, excluding the commodities accompanying the travellers.

#### **Article (2)**

In exclusion of the provisions of the provisions of Article (1), prohibition with respect to Group (18) – cars, spare parts, tyres and batteries – shall be effective as from 01.04.2005.

#### **Article (3)**

This decision shall come into force from the date of its issue, and the competent bodies shall implement it.

(Sd. & stamped)

Dr. Abdulkader Omar El-Khair  
Secretary of General People's  
Committee for Economy & Commerce

Issued on 06.01.2005

### **Decision of Secretary of General People's Committee For Economy and Commerce No. (190) of 1373 PD. (2005) for Prohibition of Importing certain Commodities, unless they have Local Agents authorized in the Great Jamahiriya**

The Secretary of General People's Committee for Economy and Commerce

After perusal of the Libyan Commercial Law, and its amending, and complementary laws,

Law No. (1) of 1369 P. D. (2001) regarding People's Congresses and Committee, and its executive regulation,

Law No. (21) of 1369 P.D. (2001) for specifying certain provisions for performing economic activities, its amendment and executive regulation, as amended by Law No. (1) of 1372 P.D. (2004),

Law No. (6) of 1372 P.D. (2004) for organizing the activities of Trade Agencies, and its executive regulation,

Decision of Secretary of General People's Committee for Economy and Commerce No. (12) of 1372 P.D. (2004) for prohibition of import of Commodities, unless the producers thereof have Local Agents authorised in the Great Jamahiriya, and

Minutes of the 34<sup>th</sup> ordinary meeting of Secretary of General People's Committee for 1372 P.D. (2004)

**Do hereby decide:**



## Text 20

**المادة الأولى**  
يُحظر استيراد السلع المبنية في الكشف المرفق بهذا القرار لأغراض تجارية اعتباراً من (2005/7/1) مسجعي، ما لم يكن للشركات المنتجة لها وكلاء تجاريين محليين حاصلين على الإذن اللازم لمزاولة أعمال الوكالة التجارية، ومقيدين بالسجل الخاص بالوكلاء التجاريين بالإدارة العامة للشركات والتسجيلات التجارية. ومن طريق الوكلاء أو بمعرفتهم.

**المادة الثانية**  
استثناءً من أحكام المادة الأولى يبدأ سريان الحظر المنصوص عليه في المادة الأولى من هذا القرار بالنسبة للسلع الواردة في البند (1) من الكشف المرفق اعتباراً من تاريخ صدور هذا القرار.

**المادة الثالثة**  
يُعمل بهذا القرار من تاريخ صدوره وعلى الجهات المختصة تنفيذه، ويلغى كل حكم يخالف أحكامه.

د. عبد القادر عمر الضير  
أمين اللجنة الشعبية العامة للاقتصاد والتجارة

**قرار أمين اللجنة الشعبية العامة للاقتصاد والتجارة**  
رقم (191) لسنة 1373 و.ر (2005 مسجعي)  
بشأن منح ضمان السلع المعصرة

**من اللجنة الشعبية العامة للاقتصاد والتجارة :-**  
وبعد الإطلاع على القانون التجاري الليبي و القوانين المعدلة والمكملة له .  
والقانون المدني الليبي .  
والقانون رقم (1) لسنة 1369 و.ر بشأن المؤتمرات الشعبية وللجان الشعبية ولائحته التنفيذية .  
والقانون رقم (21) لسنة 1369 و.ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية ولائحته التنفيذية المعدل بالقانون رقم (1) لسنة 1372 و.ر .  
والقانون رقم (6) لسنة 1372 و.ر بتنظيم أعمال الوكالات التجارية ولائحته التنفيذية .  
وعلى قرار اللجنة الشعبية العامة للاقتصاد والتجارة رقم (145) لسنة 1369 لور بتنظيم الجهاز الإداري للجنة الشعبية العامة للاقتصاد والتجارة .

**تقرر**

**مادة (1)**  
يلتزم موزعو السلع المعصرة بتوفير خدمات ما بعد البيع للمستهلك ومنحه شهادات الضمان اللازمة للمنتجات والسلع التي يقومون بتوزيعها .

**مادة (2)**  
يلتزم الموزع لكل سلعة معصرة بأن يعترف للمستهلك بحقه في الضمان ، وفي حال انتقال الملكية يبقى حق الضمان قائماً لفائدة المستهلك .

**مادة (3)**  
يقع باطلاً كل شرط في المعاملات التجارية يشترط منه إعفاء الموزع من مسؤوليته المد أو الإنقاص منها تجاه المستهلك .

**مادة (4)**  
يخضع الضمان للشروط العامة المنصوص عليها في القانون المدني ، ويُعاقب كل من يخالف ذلك وفقاً للتشريعات النافذة .

**مادة (5)**  
يُعمل بهذا القرار من تاريخ صدوره وعلى الجهات المختصة تنفيذه .

### Article (1)

It is prohibited to import the commodities indicated in the list attached hereto for commercial purposes, as from 1-7-2005, unless their producers have Local Agents obtaining the necessary provision or performing Trade Agency activities, and registered on the Register of Trade Agents in companies and Commercial Registration Department, through the Agents or thereby.

### Article (2)

In exclusion of the provisions of Article (1), the prohibition specified in Article (1) hereby with respect to the commodities indicated in Item (1) of the attached list shall be effective as from the date of issue of this decision.

### Article (3)

This decision shall come into force from the date of its issue, and the competent bodies shall implement it. Any provision contrary thereto shall be superseded.

Issued on 13-4-2005

(Signed & stamped)

Dr. Abdulkhader Omar El-Khair  
Secretary of General People's Committee  
For Economy and Commerce.

### GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA General People's Committee for Economy and Commerce

#### Decision of Secretary of General People's Committee for Economy and Commerce No. (191) of 1373 PD (2005) for granting guarantee for durable goods

The Secretary of General People's Committee for Economy and Commerce

After perusal of the Libyan Commercial Law, and its amending and supplementary laws,

The Libyan Civil Law,

Law No. (1) of 1369 PD (2001) regarding People's Congresses and Committee and its executive regulation,  
Law No. (21) of 1369 PD (2001) for specifying certain provisions of performing economic activities and its executive regulation, is amended by law No. (1) of 1972 PD (2004),

Law No. (6) of 1372 PD (2004) for organizing Trade Agency activities and its executive regulation, and

Decision of General People's Committee for Economy and Commerce No. (45) of 1369 PD (2001) for organizing the Administrative Board of General People's Committee for Economy and Commerce.

Do hereby decide:

#### Article (1)

The distribution of double goods shall provide after-sale services for the consumer and grant him the necessary guarantee certificate for the products and goods / commodities distributed thereby.

#### Article (2)

The distributor of each durable commodity shall recognize for the consumer his right to guarantee. In case of transfer of ownership, the guarantee right shall remain standing to the benefit of the consumer.

#### Article (3)

Any condition in commercial transactions / delays as would exempt the consumer from the civil liability or reaching it towards the consumer shall be void.

#### Article (4)

The guarantee shall be governed by the General Conditions specified in the Libyan Civil Law. Anyone contravening that shall be punished under the effective legislations.

#### Article (5)

This decision shall come into force from the date of its issue, and the competent bodies shall implement it.

## Text 21

نموذج استرشادي  
( لعقد أو اتفاق ) لمزاولة أعمال الوكالة التجارية

تحريراً في مدينة ..... بتاريخ / .....  
إبرم هذا ( العقد / الاتفاق ) بين كل من :-  
1. .... وصفته .....

ويشار إليه في هذا ( العقد / الاتفاق ) بالوكيل التجاري  
2. .... وصفته ( مسئولاً / ممثلاً ) عن .....  
ويشار إليها في هذا ( العقد / الاتفاق ) بالموكـل .  
حيث أن (مؤسسة / شركة / مصنع / محلاً تجارياً / موردًا) .....  
والكائن مقرها الرئيسي في .....  
وتعارض نشاط ( الإنتاج ، التصنيع ، التوريد ، تقديم الخدمات ) التالية .....  
وتؤرخ في أن يكون لها وكيل تجاري معتمد في الجماهيرية العظمى وفقاً للتشريعات النافذة  
تقدّم الاتفاق على الآتي :-

مادة ( 1 )

وفقاً لنصوص هذا ( العقد / الاتفاق ) يحق للمذكور في البند رقم ( 1 ) أعلاه ممارسة أعمال  
الوكالة التجارية لحساب الموكل في ( السلع أو الخدمات ) المحددة في هذا ( العقد / الاتفاق ) وله  
صلاحيات للترويج عن السلع أو الخدمات موضوع الوكالة التجارية و إبرام العقود أو عقد  
صفقات تجارية نيابة عن الموكل في الجماهيرية العظمى وفقاً للترتيبات التي يتم الاتفاق  
عليها بين الطرفين .

مادة ( 2 )

حدد نوع الوكالة التجارية في ممارسة أعمال :-  
الوكيل التجاري / الممثل التجاري / الوكيل بالعمولة / التوكيل التجاري / وعمل التوزيع  
وساطة و المسمرة ( )

مادة ( 3 )

عن مجال عمل الوكيل التجاري في ( السلع / الخدمات ) التالية :-  
1. ....  
2. ....  
3. ....

مادة ( 4 )

حدد النطاق الإداري لأعمال الوكيل التجاري في :-  
جميع أنحاء الجماهيرية العظمى  
المدن التالية .....  
مدينة ..... فقط .

مادة ( 5 )

مدة الوكالة التجارية ..... ( سنة واحدة / سنوات ) قابلة للتجديد وفقاً لرغبة  
الطرفين .  
في حالة وجود رغبة لأحد الطرفين في إنهاء العلاقة التعاقدية بينهما فيجب الإفصاح عن  
رغبة كتابة وقيل ( 6 ) أشهر من انتهاء مدتها .

مادة ( 6 )

في السلع و الخدمات محل الوكالة التجارية ، أن تكون من السلع و الخدمات الجيدة  
التي للمواصفات القياسية المعتمدة لها وأن تحمل علامة تجارية مسجلة وفقاً للقانون وأن  
صلاحيتها سارية المفعول أثناء البيع .

مادة ( 7 )

يحق للوكيل مزاولة أعمال الوكالة التجارية الأبعد الحصول على الأذن اللازم لممارسة عمل  
الوكالة التجارية في الجماهيرية ، والتسجيل في سجل المعد لذلك وفقاً للتشريعات النافذة .

**A GUIDING FORM FOR  
(CONTRACT OR AGREEMENT)  
FOR PERFORMING TRADE AGENCY**

This contract/agreement is made in \_\_\_\_\_ on \_\_\_\_\_  
between: -

1. \_\_\_\_\_, being \_\_\_\_\_, referred  
herein as the Trade Agent

2. \_\_\_\_\_, being responsible official /  
representative of \_\_\_\_\_, referred to hereinafter  
as the Principal / Authoriser

whereas the (Institution, Company, Factory, Commercial Shop, Supplier)  
domicile in \_\_\_\_\_, nationality \_\_\_\_\_ performs the  
activity of (production, manufacturing, supply, provision of services) as  
follows: \_\_\_\_\_, and whereas it is desirous for having an  
Authorised Trade Agent thereto in the Great Jamahiriya as per the effective  
legislations.

It is hereby agreed as follows:

**Article (1)**

Under the provisions of this (Contract / Agreement), the person mentioned in  
item (1) above shall have the right to perform Trade Agency activities to the  
account of the principal/Authoriser in the (goods and services) specified in this  
(Contract / Agreement), and he is empowered for promotion of the goods or  
services under Trade Agency contract, and to sign contracts or conclude  
commercial deals on behalf of the Principal/Authoriser in the Great Jamahiriya  
under the arrangements agreed upon between both parties.

**Article (2)**

The type of Trade Agency shall be specified for performing the activities of  
(Commercial Agency, Commercial Authorisee/Representative, Agent by  
Commission, Commercial Representative, distribution Agent, Mediation and  
Brokery).

**Article (3)**

The field of work of the Trade Agent shall be in the following (goods and  
services): -

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

**Article (4)**

The Administrative scope/area for the activities of the Trade Agent shall be  
specified as follows: -

\* Throughout the Great Jamahiriya.  
\* The following cities: \_\_\_\_\_,  
\* \_\_\_\_\_ City only.

**Article (5)**

The period of Trade Agency is \_\_\_\_\_ (One year/\_\_\_\_\_ years)  
renewable as per desire of both parties. However, in case of desire of either  
party for terminating the contractual relationship between them, such desire  
shall be indicated in writing, (6) six months before expiry of the relevant  
period.

**Article (6)**

The goods/commodities and services under Trade Agency shall be of good  
quality, in conformity with the approved Standard Specifications, and shall  
bear a registered trade mark under the Law, to be valid and fit for use during  
sale thereof.

**Article (7)**

The Trade Agent shall only perform the Trade Agency activities after obtaining  
the necessary permission for performing the Trade Agency activity in the  
Jamahiriya, and registration in the relevant Register as per the effective  
legislation.



## Text 22

مادة ( 8 )  
 يتحقق الوكيل التجاري نظير قيامه بالأعمال موضوع ( العقد / الاتفاق ) عبئاً مالياً  
 مهما ..... ( أسبوعياً ، شهرياً ، سنوياً ) أو ما يعادلها بأحد العملات القابلة للتحويل  
 عن طريق أحد المصارف العاملة بالجمهورية العظمى .

مادة ( 9 )  
 على الوكيل التجاري شهادات ضمان للسلع المعمرة التي يتعامل فيها باسم الموكل وفقاً للمدة  
 محددة لكل سلعة وعلى الوكيل و الموكل ( متضامنين ) ضمان العيوب الخفية والظاهرة التي  
 هي بالسلع خلال فترة الضمان وتقديم خدمات ما بعد البيع وعلى الأخص :-  
 استبدال السلع المعيبة أو إصلاحها أو إجراء الصيانة اللازمة لها .  
 فتح ورش للصيانة والإصلاح وتجهيزها بالمعدات والأدوات .  
 توفير الفنيين اللازمين لعملية الإصلاح والصيانة .  
 توفير قطع الغيار المعطاة للإلزام للصيانة .  
 تدريب الوطنيين على عمليات الصيانة .

مادة ( 10 )  
 في الأحوال التي يتم التنازل فيها عن الوكالة التجارية لا يكون التنازل ساريّاً إلا بعد تسجيله  
 لدى القانون ، على أن يحل الوكيل الجديد محل الوكيل السابق في تحمل الالتزامات المقررة  
 بموجب ( الاتفاقية أو العقد ) أو الناشئة عن نشاط الوكيل التجاري السابق فيما يتعلق  
 بالسلع أو الخدمات التي يتعامل فيها وخلال فترة الضمان المحددة لكل منها .  
 على حالة انتهاء العلاقة التعاقدية ( بين الوكيل و الموكل ) لأي من الأسباب تظل مسئولية  
 الوكيل و الموكل قائمة وعليهما الوفاء بجميع تعهداتهما و التزاماتهما الناشئة عن هذه  
 العلاقة ويلتزم الموكل في حالة إنهاء العلاقة التعاقدية وعدم تجديدها من جانبها ، بشراء  
 سلع مخزونات المنتجات وقطع الغيار الموجودة في حوزة الوكيل ، بالسعر الذي اشترى به

مادة ( 11 )  
 يقع بالسلع المباعة عن طريق الوكيل التجاري ، كتيبات تتضمن البيانات الاساسية المتعلقة  
 بالسلعة والمواد الداخلة في تركيبها و التعليمات الخاصة بطريقة الاستعمال و الصلاحية  
 حيث تكون مكتوبة باللغة العربية و بطريقة واضحة .

مادة ( 12 )  
 يجب أن تكون السلع و المنتجات محل عمل الوكيل التجاري مطابقة للبيانات المتعلقة بها  
 مدونة على العلبة أو على المغلفات المحفوظة بها .  
 يجب تبين وجود غش أو تلاعب في هذه البيانات تحمل الموكل مسئولية ما يترتب على هذا  
 من أي التلاعب وفقاً للقانون .

مادة ( 13 )  
 في حالة قيام الوكيل التجاري بالتعامل مع موزعين محليين لتسويق السلع التي يتعامل بها  
 على الموزع تقديم جميع الضمانات التي يمنحها المورد أو المنتج .

مادة ( 14 )  
 يحل التجاري والموكل فض المنازعات التي تنشأ بينهما بالطرق الودية أو عن طريق  
 التحكيم أو التوفيق ، فإذا لم يتم التوصل الى حل يرضى الطرفين تعين عليهما اللجوء الى  
 قضاء الليبي لفض المنازعات التي تنشأ بينهما .

مادة ( 15 )  
 هذه ( الاتفاقية / العقد ) من ( ..... ) نسخ باللغتين ( العربية / ..... )  
 ولهما نفس القوة والحجية .  
 وتودع لدى الإدارة المختصة بأمانة اللجنة الشعبية العامة للاقتصاد و التجارة  
 خلال المهلة المحددة قانوناً .

### Article (8)

The Trade Agent shall be entitled against performing the activities under the contract/agreement to a financial commission of LD ..... (weekly, monthly, annually) or equivalent thereto in a transferable currency through a Bank operating in the Great Jamahiriya.

### Article (9)

The Trade Agent shall issue certificate of guarantee for the durable goods in which he deals in the name of the Principal/Authoriser as per the period specified for each commodity.

The Agent and Principal shall jointly guarantee the concealed and apparent defects in the goods during the guarantee period, and shall provide after-sale services, particularly the following: -

- \* Replacement or repair of the defective goods or performing the necessary maintenance thereto.
- \* To open workshops for maintenance and repair, and to provide them with equipment and tools
- \* To provide the necessary technicians for repair and maintenance.
- \* To provide the necessary spare parts and equipment for maintenance
- \* To train national employee in maintenance operations.

### Article (10)

In the cases where the Trade Agency is assigning, the assignment shall be only valid after registration thereof under the Law, provided that the new Agent shall replace the previous Agent for bearing the obligations specified under the agreement or contract, or arising from the activity of the previous Agent regarding the goods or services in which he deals during the guarantee period specified for each of them.

In case of expiry of the contractual relationship between the Agent and the Principal for any reason, the responsibility of the Agent and Principal shall remain existent, and they should fulfilled all their undertakings and obligations arising from such relationship.

The Principal shall, in case of terminating the contractual relationship and non-renewal thereof from his side, purchase all stocks of product and spare parts in possession of the Agent at the purchase price of the Agent.

### Article (11)

There shall be enclosed with the goods sold through the Trade Agent pamphlets including the basic data on the commodity and materials used in manufacturing thereof and the instructions for use and validity, be written in Arabic language clearly.

### Article (12)

The commodities and products under activity of the Trade Agent shall be in conformity with the relevant data as indicated on the tin or packages thereof. If deceit or fraudulence in such data transpires, the Principal shall bear the responsibility for that under the Law.

### Article (13)

If the Trade Agent deals with local distributors for selling the goods in which he deals, the distributor shall provide all guarantees granted by the supplier or producer.

### Article (14)

The Trade Agent and the principal shall settle the disputes arising between them amicably or through arbitration or conciliation. If no solution satisfactory to both parties is reached they shall recourse to the Libyan Judiciary / court for settlement of the disputes arising between them.

### Article (15)

This agreement/contract is made in ..... copies in both Arabic language and ..... language, both having the same force and pretext, to be deposited with the competent Department in Secretariat of the General People's Committee for Economy and Commerce, within the legally specified period.

## Text 23

**المستندات المطلوبة للتسجيل في سجل الوكالات التجارية**

**بالنسبة للأفراد :-**

- شهادة إثبات الجنسية العربية الليبية .
- شهادة بعدم الإفلاس .
- شهادة الخلو من السوابق .
- قرار بعدم مزاولة عمل وطني .
- تعهد بإيداع العقود والاتفاقيات المبرمة مع الغير خلال (30) ثلاثين يوماً من تاريخ إبرامها .
- تعهد بتحويل ما يتقاضاه من صولة إلى الجماهيرية بمرور ثلاث أشهر من تاريخ الاستحقاق .
- تعهد بتخصيص ما لا يقل 20% قيمة السلع المعمرة الموردة إلى الجماهيرية في شكل قطع قطع غير وسائط ولزعة

**بالنسبة للشركات والتشركات :-**

- تعهد بتوفير محل مناسب لممارسة نشاط الوكالات التجارية والتعهد لدى مكتب السجل التجاري المختص خلال مدة أسبوعاً 6 أشهر من تاريخ التأسيس .
- شهادة من المصرف الذي يتعامل معه الوكيل في الجماهيرية العظمى .
- عقد الوكالة المبرم بين الوكيل والموكل يتضمن البيانات الأساسية لطرفي العقد كقيمة العمولة ومدة سريان العقد ونوع السلع والبضائع موضوع عقد الوكالة . إلخ من البيانات على أن يكون مترجم ومصدق من المكتب الشعبي .

**بالنسبة للشركات والتشركات :-**

- عقد تأسيس الشركة ونظامها الأساسي .
- قرار الإذن بمزاولة النشاط .
- استخراج تجاري بين عنوان الشركة أو التشركية بوضوح .
- شهادة من المحكمة بعدم الإفلاس .
- تعهد بتحويل ما يتقاضاه الشركة من صولة إلى الجماهيرية
- تعهد بتخصيص ما لا يقل 20% من قيمة السلع المعمرة الموردة إلى الجماهيرية في شكل قطع قطع غير وسائط ولزعة
- تعهد بإيداع العقود والاتفاقيات المبرمة مع الغير خلال (30) يوماً من تاريخ إبرامها .
- شهادة من المصرف الذي يتعامل معه الوكيل في الجماهيرية العظمى .
- عقد الوكالة المبرم بين الوكيل والموكل يتضمن البيانات الأساسية لطرفي العقد كقيمة العمولة ومدة سريان العقد ونوع السلع والبضائع موضوع عقد الوكالة . إلخ من البيانات على أن يكون مترجم ومصدق من المكتب الشعبي .

**بالنسبة للموكل :-**

- استخراج تجاري من مكان تسجيله بالخارج مترجم إلى اللغة العربية ومصدق من المكتب الشعبي .
- شهادة من المحكمة بعدم الإفلاس على أن تكون مترجمة إلى اللغة العربية ومصدق من المكتب الشعبي .
- إقرار من مكتبه بعدم الإفلاس مترجم إلى اللغة العربية ومصدق من المكتب الشعبي .

**الإدارة العامة للشركات والتسجيلات التجارية**

**ملاحظات عامة :-**

- تقدم الطلب وفقاً للنموذج المعد لهذا الغرض مرفقاً بإيصال مبالغ الرسوم المطلوبة وقدرها (150) دينار .
- تستولى الإدارة دراسة المستندات والبيانات فيها وفي حالة الموافقة وصدر قرار بالإذن بمزاولة النشاط يجب على الوكيل وخلال شهر من تاريخ صدور الإذن تقديم المستندات الآتية :-

- عقد الوكالة المبرم بين الوكيل والموكل مبرم مباشرة مع الشركة أو المحل المنتج للسلعة أو المقدم للخدمة محل عقد الوكالة متضمناً تحديد نوع الوكالة التجارية ومتنها ومجال النشاط ونطاقه والمقابل المالي لعمل الوكيل .
- مستخرج رسمي من صحيفة قيد الشركة أو المصنع الأجنبي في السجل التجاري في البلد الذي يوجد به المقر الرئيسي .
- تعهد من الوكيل بتحويل ما يستحقه من صولة أو مقابل إلى الجماهيرية العظمى .

- يجب أن تكون جميع المستندات الصادرة في دولة أجنبية مترجمة إلى اللغة العربية ومصدق عليها من الجهات المختصة والمكتب الشعبي بذلك الدولة .

**Documents Required for Obtaining Necessary Permit for Carrying on the Activity of Commercial Agencies and for Registration with the Commercial Agent Register**

**First: For Individuals**

- Certificate of Libyan nationality
- Statement that the person concerned is not a government employee (civil servant)
- Certificate of freeness from criminal precedents
- Certificate from the competent court of non-bankruptcy
- Preliminary approval from the principal to the applicant to nominate him as his agent in the Great Jamahiriya, to be translated and attested by the Libyan People's Bureau (Embassy).
- Certificate evidencing registration of the trademark used in the promotion of commodity subject of the Agency contract, that should be translated and attested by the Libyan People's Bureau (Embassy).

**Second: As for Companies and Partnership**

- Memorandum and articles of association
- Extract from the Commercial Register
- Certificate of inscription with the Register of Importers
- Certificate evidencing that the capital is owned fully by Libyans
- Certificate of non-bankruptcy from the competent Court.
- Preliminary approval for the applicant from the principal to nominate it as its agent in the Great Jamahiriya to be translated and attested by the Libyan People's Bureau (Embassy).

**General Notices**

- The application shall be presented in accordance with the form made for this purpose, attached therewith the prescribed fee equal to (LD 150)
- The Department shall examine the documents and decide therein. In case of approval by this department and issuance of decision permitting the carrying on of this activity, the agent shall, within one month from the date of decision, submit the following documents:

- Contract of agency concluded between the principal and the agent to be signed directly with the company or plant/factory producing the commodity or rendering the service, subject of Agency Contract and shall specify the type of commercial agency, its duration, scope of activity, area and remuneration against the agent's services.
- An official extract of entry of the foreign company or plant in the Commercial Register of the country where the main offices are located.
- Commitment by the agent to transfer to Libya, the commissions or remuneration received.

All documents issued in a foreign country shall be translated into Arabic language and attested by the competent authorities and the Libyan People's Bureau (Embassy) in that State



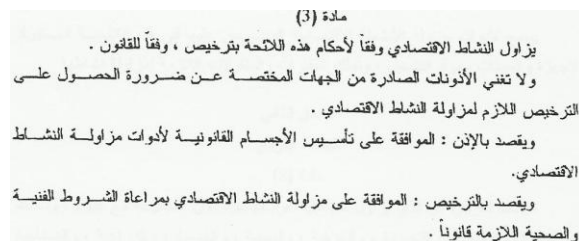
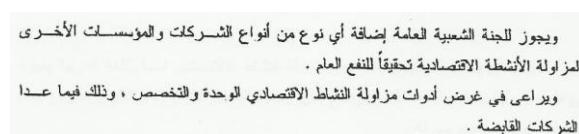
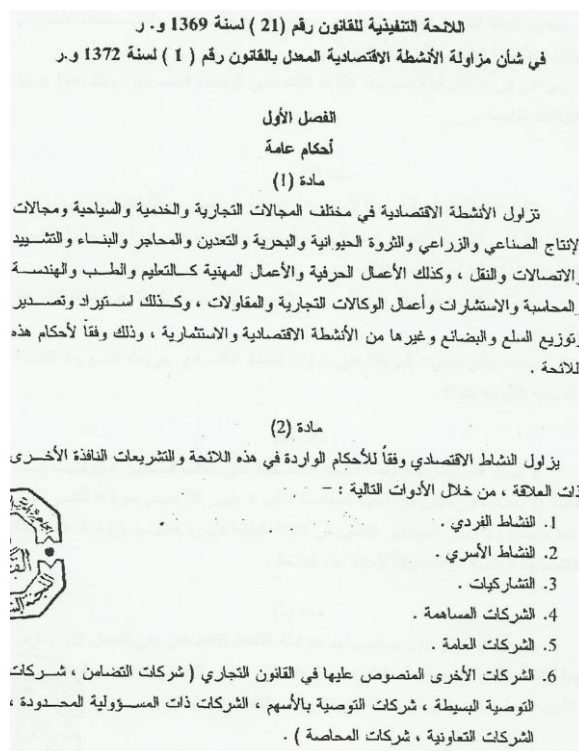
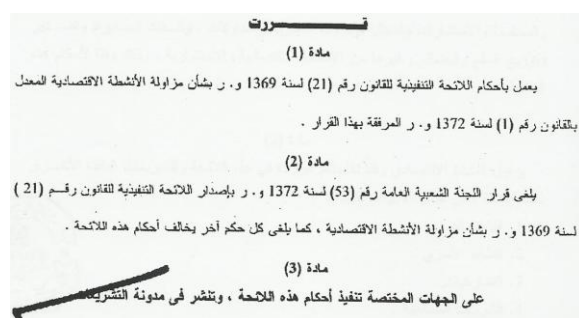
## Text 24

<p><b>قرار اللجنة الشعبية العامة</b> رقم ( ٧١ ) لسنة 1374 و.ر ( 2006 مسميحي ) بإصدار اللائحة التنفيذية للقانون رقم (21) لسنة 1369 و.ر بشأن مزاولة الأنشطة الاقتصادية المعدل بالقانون رقم (1) لسنة 1372 و.ر</p> <p><b>اللجنة الشعبية العامة</b></p> <p>- بعد الإطلاع على القانون رقم (1) لسنة 1369 و.ر بشأن المؤتمرات الشعبية واللجان الشعبية ولائحته التنفيذية.</p> <p>- وعلى القانون التجاري الليبي والقوانين المعدلة والمكملة له .</p> <p>- وعلى القانون رقم (65) لسنة 1970 مسميحي ، بتقرير بعض الأحكام الخاصة بالتجار والشركات التجارية والإشراف عليها .</p> <p>- وعلى القانون رقم (110) لسنة 1975 مسميحي ، بتقرير أحكام خاصة بالهيئات والمؤسسات العامة وشركات القطاع العام .</p> <p>- وعلى القانون رقم (30) لسنة 1977 مسميحي ، بشأن الحرس البلدي .</p> <p>- وعلى القانون رقم (9) لسنة 1985 مسميحي ، بشأن الأحكام الخاصة بالتشاريكات وتعديلاته ، ولائحته التنفيذية.</p> <p>- وعلى القانون رقم (22) لسنة 1989 مسميحي ، بشأن التنظيم الصناعي ، ولائحته التنفيذية .</p> <p>- وعلى القانون رقم (9) لسنة 1425 ميلادية ، بتعريم اقتصاد المضاربة ولائحته التنفيذية .</p> <p>- وعلى القانون رقم (4) لسنة 1426 ميلادية ، بشأن تنظيم استيراد وتوزيع السلع ولائحته التنفيذية .</p> <p>- وعلى القانون رقم (6) لسنة 1430 ميلادية ، بشأن النظام التشاركي في مجالي التعليم والصحة .</p> <p>- وعلى القانون رقم (3) لسنة 1369 و.ر ، بشأن التخطيط العمراني ولائحته التنفيذية .</p>	<p>- وعلى القانون رقم (21) لسنة 1369 و.ر ، بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية .</p> <p>- وعلى القانون رقم (24) لسنة 1369 و.ر ، بشأن منع استعمال غير اللغة العربية في جميع المعاملات.</p> <p>- وعلى القانون رقم (15) لسنة 1371 و.ر ، بشأن حماية وتحسين البيئة .</p> <p>- وعلى القانون رقم (6) لسنة 1372 و.ر ، بشأن الوكالات التجارية ولائحته التنفيذية .</p> <p>- وعلى القانون رقم (1) لسنة 1372 و.ر بإضافة وتعديل بعض أحكام القانون رقم (21) لسنة 1369 و.ر ، بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية .</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (53) لسنة 1372 و.ر ، بإصدار اللائحة التنفيذية للقانون رقم (21) لسنة 1369 و.ر .</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (122) لسنة 1372 و.ر ، بتقرير بعض الأحكام في شأن تأسيس الشركات.</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (189) لسنة 1372 و.ر ، بإضافة أحكام للائحة التنفيذية للقانون رقم (21) لسنة 1369 و.ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية .</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (198) لسنة 1372 و.ر ، بتقرير بعض الأحكام في شأن اللائحة التنفيذية للقانون رقم (21) لسنة 1369 و.ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية .</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (34) لسنة 1373 و.ر ، بإضافة حكم للائحة التنفيذية للقانون رقم (21) لسنة 1369 و.ر ، بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية.</p> <p>- وعلى قرار اللجنة الشعبية العامة رقم (91) لسنة 1373 و.ر ، بتقرير بعض الأحكام في شأن تأسيس الشركات .</p>	<p>- وعلى ما جاء في محضر الاجتماع الأول لسنة 1374 و.ر ، للجنة السياسات الاقتصادية المنعقد بتاريخ 1374/5/8 و.ر .</p> <p>- وبناء على ما عرضه أمين اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار بكتابه رقم (3251) المؤرخ في 1374/6/12 و.ر .</p> <p>- وعلى ما تفرته اللجنة الشعبية العامة في اجتماعها العادي الثاني لسنة 1369 و.ر .</p> <p>- وعلى ما تفرته أمانة اللجنة الشعبية العامة في اجتماعها العادي الثاني لسنة 1374 و.ر .</p>
---	---	--

<p><b>General People's Committee</b></p> <p><b>Decision of General People's Committee, No. (171) of 1374 PD (2006) for Law No. (21) of 1369 PD (2001) for Performing Economic Activities, as Amended by Law No. (1) of 1372 PD (2004)</b></p> <p><i>The General People's Committee</i></p> <p>After perusal of:</p> <ul style="list-style-type: none"> <li>Law No. (1) of 1369 PD (2001) regarding People's Congresses and Committees, and its amendments.</li> <li>The Libyan Commercial Law and its amending and complementary laws.</li> <li>Law No. (65) of 1970 for specifying certain provisions for merchants and trading companies, and supervision thereof.</li> <li>Law No. (110) of 1975 for specifying provisions for public bodies and institutions, and public sector companies.</li> <li>Law No. (30) of 1977 regarding Municipal Guards.</li> <li>Law No. (9) of 1985 regarding the provisions for Partnerships, its amendments and executive regulation.</li> <li>Law No. (22) of 1989 regarding Industrial Organisation, and its executive regulation.</li> <li>Law No. (9) of 1425 PB (1995) for prohibiting speculation economy, and its executive regulation.</li> <li>Law No. (4) of 1426 PB (1996) for organising import and distribution of commodities, and its executive regulation.</li> <li>Law No. (6) of 1430 PB (2000) regarding Partnership System in both Education and Heal fields.</li> </ul>	<ul style="list-style-type: none"> <li>Law No. (3) of 1369 PD (2001) regarding Urban Planning, and its executive regulation.</li> <li>Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic activities.</li> <li>Law No. (24) of 1369 PD (2001) for prohibiting use of other than Arabic Language in all transactions.</li> <li>Law No. (15) of 1371 PD (2003) for environmental protection and improvement.</li> <li>Law No. (6) of 1372 PD (2004) regarding Trade Agency, and its executive regulation.</li> <li>Law No. (1) of 1372 PD (2004) for adding and amending certain provisions of Law No. (21) of 1369 PD for specifying certain provisions for performing economic activities.</li> <li>Decision of General People's Committee, No. (53) of 1372 PD (2004) for issuing the executive regulation for Law No. (21) of 1369 PD (2001).</li> <li>Decision of General People's Committee, No. (122) of 1372 PD 92004) for specifying certain provision for establishing companies.</li> <li>Decision of General People's Committee No. (189) of 1372 PD (2004) for adding provisions to the executive regulation for Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic activities.</li> <li>Decision of General People's Committee, No. (198) of 1372 PD (2004) for specifying certain provisions for the execution regulation for Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic activities.</li> <li>Decision of General People's Committee, No. (34) of 1373 PD (2005) for adding a provision to the executive regulation for law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic activities.</li> <li>Decision of General People's Committee No. (91) of 1373 PD (2005) for specifying certain provision for establishing companies.</li> </ul>
--	---

<ul style="list-style-type: none"> <li>Minutes of 1<sup>st</sup> Ordinary Meeting for 1374 PD (2006) of Economic Policies Committee, held on 8-5-2006, and</li> <li>Acting upon submission of Secretary of General People's Committee for Economy, Commerce and Investment by his Letter No. (3251) dated 12-06-2006.</li> <li>Decision of General People's Committee in its 2<sup>nd</sup> Ordinary Meeting for 1369 PD (2001), and</li> <li>Decision of Secretariat of General People's Committee in its 21<sup>st</sup> ordinary meeting of 1374 PD (2006).</li> </ul>
---

## Text 25



Do hereby decide:

### Article (1)

The provisions of the executive regulation for Law No. (21) of 1369 Pd (2001) for performing economic activities, as amended by Law No. (1) of 1372 PD (2004), attached hereto, shall be applicable.

### Article (2)

Decision of General People's Committee No. (53) of 1372 PD (2004) for issuing the execution regulation for Law No. (21) of 1369 PD (2001) for performing economic activities shall be superseded, as well as any provisions contrary hereto.

### Article (3)

The Competent bodies shall implement the provisions of this Regulation, and shall be published in the Procedures Encyclopedia.

## The Executive Regulation for Law No. (21) of 1369 PD (2001) for Performing Economic Activities, as Amended by Law No. (1) of 1372 PD (2004)

### Chapter One

#### General Provisions

#### Article (1)

The economic activities in the various Commercial, Services, Tourist, Industrial and Agricultural, Animal and Marine Wealth production fields, mining, quarries, building, construction, communication and transport, as well as crafts and vocational activities, such as Education, Medicine, Engineering, Accounting, Consultancy, Trade Agency and Contracting Works, and import, export and distribution of goods and commodities, and other economic and investment activities, shall be performed under the provisions of this Regulation.

#### Article (2)

The economic activity shall be performed under the provisions of this Regulation and other relevant effective legislations through the following tools:

- 1- Individual activity.
- 2- Familial activity
- 3- Partnerships
- 4- Joint-Stock Companies
- 5- General Companies
- 6- Other Companies specified in Commercial law (Joint Liability Companies, Joint Partnership Companies, Sharing Companies, Limited Liability companies, Cooperation Companies and Joint Venture Companies)

The General People's Committee may add any kind of other companies and institutions for performing economic activities for achieving public interest.

For the purpose of tools for performing economic activity, the unity and specialisation shall be observed, excluding Holding Companies.

#### Article (3)

The economic activity shall be performed under the provisions of this Regulation by license, in accordance with the Law.

Permissions issued by the competent bodies shall not exempt from necessity for obtaining the necessary License for performing the economic activity. Permission means approval for establishing the legal bodies / structures of tools for performing economic activity.

License means approval for performing economic activity, in observance of the necessary technical and health conditions legally.



## Text 26

<p><b>مادة (4)</b></p> <p>لا يجوز الترخيص بمزاولة الأنشطة الاقتصادية التي يتطلب القانون لمزاومتها إنشاً خلاصاً إلا بعد صدور الإذن من الجهة المختصة ، كما لا يجوز الترخيص بمزاولة أكثر من نشاط واحد ، ولا يجوز للموظفين العاملين في الدولة طيلة فترة عملهم مزاولة الأنشطة الاقتصادية الخاصة ، وذلك وفقاً لأحكام هذه اللائحة .</p> <p><b>مادة (5)</b></p> <p>يجب أن تتوفر فيمن يرخص لهم بمزاولة النشاط الاقتصادي وفي المحال التي يمارس فيها الاشتراطات الصحية والفنية المنصوص عليها في القانون الصحي وقانون حملات النظافة وقانون التخطيط العمراني ، وغيرها من التشريعات النافذة ذات العلاقة .</p> <p><b>مادة (6)</b></p> <p>يجب أن يحمل الترخيص الصادر بمزاولة النشاط الاقتصادي اسماً باللغة العربية يميزه ويتفق و نوعية و طبيعة النشاط ، وتوضع على واجهة المحل لافتة بالاسم الذي يمارس به النشاط ، والرقم الضريبي له .</p> <p><b>مادة (7)</b></p> <p>يسمح لأدوات مزاولة الأنشطة الاقتصادية المنصوص عليها في هذه اللائحة استيراد الأجهزة والمعدات ومواد التشغيل ، وتلك العقارات والمنقولات اللازمة لمزاولة نشاطها .</p> <p><b>الفصل الثاني</b> <b>النشاط الفردي</b></p> <p><b>مادة (8)</b></p> <p>النشاط الفردي هو الذي يزاول من قبل الفرد مباشرة دون المشاركة مع غيره ، وذلك في المجالات الاقتصادية التجارية ، والحرفية ، والمهنية ، والخميرية ، والزراعية ، والصناعية والإنتاجية والنقل البري .</p> <p><b>مادة (9)</b></p> <p>يشترط للترخيص بمزاولة الأنشطة الاقتصادية الفردية أن تتوفر في المتقدم ما يلي :</p> <ol style="list-style-type: none"><li>1. أن يكون متمتعاً بالجنسية الليبية .</li><li>2. أن يكون قد بلغ من العمر ( 18 ) ثمانية عشر سنة ميلادية ، وأن يكون كامل الأهلية .</li><li>3. أن يكون لائقاً صحياً لمزاولة النشاط الاقتصادي المطلوب الترخيص به .</li><li>4. ألا يكون موظفاً عاماً ، وأن يكون متفرغاً لمزاولة النشاط .</li><li>5. أن يكون متحسلاً على المؤهل العلمي اللازم إذا كانت المهنة أو الحرفة تتطلب ذلك .</li><li>6. أن يتخذ محلاً لممارسة النشاط .</li><li>7. أن يكون مسجلاً بنظام الضمان الاجتماعي .</li><li>8. أن يكون مسجلاً بمصلحة الضرائب .</li></ol> <p><b>الفصل الثالث</b> <b>النشاط الأسري</b></p> <p><b>مادة (10)</b></p> <p>يقصد بالنشاط الأسري:</p> <p>النشاط الذي يمارس من قبل أفراد الأسرة مباشرة ( الزوج ، الزوجة ، الأبناء ) .</p>	<p><b>Article (4)</b></p> <p>It is not allowed to license for performing economic activities requiring legally specified permission, except after issue of permission from the competent body.</p> <p>It is not also allowed to the State employees during the period of their services to perform private economic activities, under the provisions of this Regulation.</p> <p><b>Article (5)</b></p> <p>Those licensed for performing economic activity in the places thereof shall fulfill the health / hygienic and technical conditions specified in Health Law, Environmental Protection Law, and Urban Planning Law, and other relevant effect legislations.</p> <p><b>Article (6)</b></p> <p>The License issued for performance of economic activity shall carry a distinctive name, as compatible with the type and nature of the activity, and to put on the facet of the place a signboard in the name of performing the activity and relevant Tax Number.</p> <p><b>Article (7)</b></p> <p>The tools for performing economic activities, as specified herein shall be allowed to import equipment, devices and operational material, and ownership of necessary real estates and movables for performing their activities.</p> <p><b>Chapter Two</b> <b>Individual Economic Activity</b></p> <p><b>Article (8)</b></p> <p>The individual economic activity is that performed by the individual directly, without participation / partnership with others, in the commercial, craft, vocational service, agricultural, industrial and productive fields, and land transport.</p> <p><b>Article (9)</b></p> <p>The applicant for license for performing individual economic activity shall fulfill the following conditions:</p> <ol style="list-style-type: none"><li>1- To be holding the Libyan nationality.</li><li>2- To have reached (18) eighteen years of age, and fully eligible.</li><li>3- To be physically fit for performing the economic activity required for licensing thereof.</li><li>4- Not to be a public employee, and to be devoted to performing the economic activity.</li><li>5- To be holding the necessary educational qualification, if the job or craft would so require.</li><li>6- To provide a place for performing the economic activity.</li><li>7- To be registered in Social Security System.</li><li>8- To be registered at Tax Department.</li></ol> <p><b>Chapter Three</b> <b>Familial Economic Activity</b></p> <p><b>Article (10)</b></p> <p>Familial economic activity means the activity performed by family members directly (Husband, wife, and children).</p>
--	--

## Text 27

**مادة (11)**

يشترط للترخيص بممارسة النشاط الأسري ما يلي :

1. ألا يكون طالب الترخيص مرخصاً له بمزاولة أي نشاط اقتصادي آخر ، وألا يكون شريكاً في أية تشاركية أو عاملاً بأية جهة عامة .
2. أن يقوم أفراد الأسرة القادرين بجهد حقيقي في النشاط ومتفرغين له .
3. ألا يقل عمر أي من أفراد الأسرة المزاولين للنشاط عن ثمانية عشر سنة ميلادية ، وأن يكونوا كاملّي الأهلية .
4. أن يكون طالب الترخيص مسجلاً بنظام الضمان الاجتماعي .
5. أن يكون طالب الترخيص مسجلاً بمصلحة الضرائب .
6. أن يكون طالب الترخيص متمتعاً بالجنسية الليبية .

ويجوز الإعفاء من شرط الجنسية لرب الأسرة إذا ما كان طالباً للترخيص في إحدى الحالات الآتية :-

(أ) وفاة الزوج إذا كان متزوجاً بغير ليبية وله أولاد منها .

(ب) إذا كان رب الأسرة أجنبياً ومتزوجاً من ليبية وله أولاد منها .

**مادة (12)**

يزول النشاط الأسري في البيت أو المزرعة بشرط مراعاة حقوق الجيران والاشتراطات الصحية ومقتضيات شؤون البيئة .

### الفصل الرابع

#### التشاريكات

**مادة (13)**

يقصد بالتشاريكات : الأشخاص الاعتبارية التي يشارك فيها الأفراد الوطنيون مباشرة فيما بينهم بالجهود ( أو بالجهود والمال معاً ) حسب طبيعة النشاط ، وتكون سلطة القرار جماعية بينهم ولا ينفرد أحدهم بها ، وذلك لمزاولة الأنشطة الاقتصادية (الإنتاجية والخدمية المختلفة بما في ذلك أنشطة التعليم والتدريب والصحة ولستيراد وتصدير السلع والأنشطة المهنية الأخرى ) .

ويكون الشركاء متفرغين ، ويقومون بالعمل مباشرة دون استخدام الغير في مجال النشاط المرخص لهم به قانوناً .

**مادة (14)**

يشترط لتأسيس التشاريكات والترخيص لها بمزاولة الأنشطة الاقتصادية ما يلي :

- 1- أن يكون الشركاء متمتعين بالجنسية الليبية .
- 2- أن يكون كل شريك من الشركاء قد بلغ من العمر ثمانية عشر سنة ميلادية ، وأن يكون كامل الأهلية .
- 3- أن يكون كل شريك من الشركاء لائقاً صحياً لمزاولة النشاط المرخص له به .

- 4- أن يراعى في تحديد غرض التشاريكية الوحدة والتخصص .
- 5- أن يكون الشركاء متفرغين للعمل ويزاولونه بأنفسهم مباشرة دون الاستعانة بغيرهم إلا فيما تقتضيه بعض الأعمال الفنية الدقيقة والخاصة وبشكل مؤقت .
- 6- ألا ينفرد أحد أو بعض الشركاء بصفة أو سلطة صاحب العمل ، وأن تدار التشاريكية وفقاً لما يتفق عليه الشركاء جميعاً .
- 7- ألا يكون أي من أعضاء التشاريكية مشاركاً في أية تشاركية أخرى أو عاملاً بأية جهة عامة .
- 8- أن يكون الشركاء متحصلين على المؤهل العلمي اللازم إذا كانت المهنة أو الحرفة تستلزم ذلك .

### Article (11)

It is required for licensing for performing the familial economic activity to fulfill the following conditions:

- 1- The applicant for license shall not be licensed for performing any other economic activity, and not to be a partner in any Partnership or worker with any Public Body.
- 2- The capable family members shall exert strenuous efforts in the activity and devoted thereto.
- 3- Any family member performing the activity shall not be less than (18) eighteen years of age, and fully eligible.
- 4- The applicant for license shall be registered in Social Security System.
- 5- The applicant for license shall be registered in Tax Department
- 6- The applicant for license shall be holding the Libyan nationality.

It may be exempted from the condition for nationality for the Head of Family, if he applies for license in any of the following two cases:

- a- Death of wife, if married with a Non-Libyan and has children therefrom.
- b- If the Head of Family is a foreigner and married with a Libyan and having children therefrom.

### Article (12)

The familial economic activity shall be performed at home or farm, on condition of observing the rights of neighbours and health / hygienic conditions and environmental affairs requirements.

## Chapter Four

### Partnerships

#### Article (13)

Partnerships mean the corporate / autonomous bodies in which citizens participate directly between them by efforts (or by efforts and moving together) as per the nature of activity. The power for decision shall be collective between them, which shall not be unilateral for performing the economic activities / the various productive and service activities, including Educational, Training, and Health activities, import and export of commodities and other vocational activities).

The partners shall be devoted, and perform the work directly without employment of others in the field of activity legally licensed for them.

#### Article (14)

It is required for establishing Partnerships and licensing them for performing economic activities to fulfill the following conditions:

- 1- The Partners shall be holding Libyan nationality.
- 2- Each partners shall have reached (18) eighteen years of age, and fully eligible.
- 3- Each partner shall be physically fit for performing the activity licensed for him.
- 4- To observe in specifying purpose of the Partnership, unity and specialisation.
- 5- The partners shall be devoted to work and perform it by themselves, without seeking assistance of others, except as required for certain precise technical and special works temporarily.
- 6- No member or certain partners shall have individual capacity or power of the Employer, and the Partnership shall be managed as agreed upon by all partners.
- 7- Any member of the Partnership shall not participate in another Partnership or working in any Public Body.
- 8- The partners shall be holding the necessary educational qualification, if the job or craft would so require.



## Text 28

**مادة (88)**

تتولى اللجنة الشعبية العامة تحديد رسوم استخراج وتجديد التراخيص المنصوص عليها في هذه اللائحة وفقاً لأحكام التشريعات النافذة ، كما تتولى تحديد رسوم استخراج الشهادات الصادرة عن سجلات ودفاتر مكاتب التراخيص التي تمنح هذه الشهادات لمن يطلبها من ذوي الشأن أو لكل ذي مصلحة مشروعة ، ولمن يحصل على إذن باستخراجها من جهة قضائية أو جهة تحقيق قضائي أو إداري بناء على عرض من أمين اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار .

**مادة (89)**

يجب على المرخص لهم بمزاولة نشاط التصدير أو الاستيراد أو توزيع السلع سواء في محل ثابتة أو باعة متجولين أن يحتفظوا بالمستندات التي تبين طبيعة عملهم التجاري ، وعليهم أن يبرزوها لرجال الضبط القضائي المختصين عند الطلب .

ويعتبر من قبيل المخالفة لأحكام هذه اللائحة عدم وجود أو إبراز تلك المستندات ويترتب على تكرار ذلك جواز إلغاء الترخيص .

**الفصل التاسع**  
**الأسعار والتصدير والاستيراد**

**مادة (90)**

يحظر على جميع أدوات مزاولة النشاط الاقتصادي المنصوص عليها في هذه اللائحة عرض السلع والبضائع للبيع إلا بعد وضع سعرها بطريقة واضحة .

**مادة (91)**

يحظر على أدوات مزاولة النشاط الاقتصادي المضاربة في السلع كما يحظر عليها إخفاء أو احتكار أية سلعة من تلك السلع .

**مادة (92)**

يتم التصدير والاستيراد للسلع المسموح بها من قبل القنوات المرخص لها بذلك وفقاً لأحكام هذه اللائحة ، ودوماً حاجة إلى الحصول على رخصة تصدير أو استيراد .

وتحدد دورياً بقرار من اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار السلع والبضائع المحظور أو المقصور تصديرها أو استيرادها والإجراءات التنظيمية المتعلقة بها .

**مادة (93)**

يحظر استيراد السلع والبضائع بكميات تجارية بغير أساليب الدفع المعتمدة من قبل مصرف ليبيا المركزي .

**مادة (94)**

يشترط لمزاولة أعمال تصدير السلع والبضائع ما يلي :-

- 1- الالتزام بتصدير السلع والبضائع المسموح بتصديرها .
- 2- مراعاة كافة الاشتراطات الصحية والقيمية والتقنية .

**الفصل العاشر**  
**التسهيلات والمساعدات**

**مادة (95)**

تتولى الجهات الإدارية والمصارف التجارية تقديم التسهيلات والمساعدات لأدوات مزاولة الأنشطة الاقتصادية التي تؤسس وفقاً لأحكام هذه اللائحة لتمكينها من مزاولة نشاطها وعلى الأخص ما يلي :

- 1- القروض والتسهيلات الائتمانية .
- 2- دعم تصدير السلع والخدمات المحلية في الأسواق الخارجية .
- 3- تسهيل استيراد ما تحتاجه من معدات وقطع غيار ومستلزمات تشغيل عن طريق فتح الاعتمادات بتغطية جزئية أو تسهيلات ائتمانية .
- 4- الانتفاع بالأراضي اللازمة لمباشرة النشاط .

### Article (88)

The General People's Committee shall specify the fees for extraction and renewal of licenses specified herein under the provisions of effective legislations, and shall also specify the fees for extraction of certificates from the registers and books of the Licensing Offices issuing such certificates to those concerned and anyone having legal interest, and anyone obtaining permission for extraction thereof from a Judicial Body or Judicial or Administration Investigation Body.

### Article (89)

The Licensees for performing export and import or distribution of commodities, whether in fixed places or hawker render, shall keep the documents indicating the nature of their commercial work, and to show them to the competent Law Enforcement Officers, upon request. Inexistence or unshowing such documents shall be considered as contravention lead to canceling the License.

## Chapter Nine

### Prices of Export and Import

#### Article (90)

All tools / bodies for performing economic activity, as specified herein shall be prohibited to offer the goods and commodities for sale, except after indicating their price clearly.

#### Article (91)

It is not allowed for tools / bodies for performing economic activity to speculate in the goods / commodities, nor conceal or monopolise any commodity thereof.

#### Article (92)

Export and import of the goods / commodities allowed shall be carried out by the licensed channels for that, without need for obtaining export or import license.

The goods and commodities prohibited or restricted for export or import and the relevant organisational procedures shall be specified periodically by decision of General People's Committee for Economy, Commerce and Investment.

#### Article (93)

It is prohibited to import goods and commodities in commercial quantities by other methods of payment approved by Central Bank of Libya.

#### Article (94)

It is required for performing export of goods and commodities to fulfill the following conditions:

- 1- To adhere to export of goods and commodities allowed for export.
- 2- To observe all health / hygienic, standard and technological conditions.

## Chapter Ten

### Facilities and Assistance

#### Article (95)

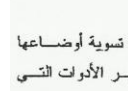
The Administrative Bodies and Commercial Banks shall provide facilities and assistance to tools / bodies for performing economic activities, at established under the provisions of the Regulation, to enable them to perform their activities, especially the following:

- 1- Loans and credit facilities.
- 2- Subsidy / support to export of local commodities and services to foreign markets.
- 3- To facilitate import of their needs for equipment, spare parts and operational necessities by opening Documentary Credits (I/Cs) for partial coverage or credit facilities.
- 4- Use of the necessary lands for performing the factitively.

## Text 29

<p>مادة (96)</p> <p>تدعم المشروعات الإنتاجية التي تقوم بتصدير كل أو بعض منتجاتها بإحدى طرق الدعم الآتية :</p> <p>1- الإعفاء من سداد ثمن الأراضي والانتفاع بها للمشروعات الإنتاجية .</p> <p>2- تشجيع عمليات تسويق السلع والخدمات المحلية في الأسواق الخارجية وتقديم الحوافز للمصدرين المحليين للمشاركة في المعارض الدولية ، بما في ذلك تنظيم البعثات التجارية للخارج والمعارض المحلية على وجه الخصوص .</p> <p>3- تقديم المعلومات التجارية والاقتصادية والاستشارات عن الأسواق الخارجية للمصدرين المحليين بالتعاون في ذلك مع الجهات ذات العلاقة والتعرف على المعوقات التي قد تواجههم والعمل على حلها .</p> <p>4- تقديم الدعم الفني والمالي والإداري لمصدري السلع والخدمات المحلية .</p> <p>5- تطوير خدمات التعبئة والتغليف وفقاً للمعايير المعتمدة بالخصوص .</p> <p>6- تقديم القروض والضمانات اللازمة لإنجاح برنامج التصدير .</p> <p>الفصل الحادي عشر</p> <p>أحكام ختامية</p> <p>مادة (97)</p> <p>يجوز للوحدات الإدارية والشركات العامة وغيرها من الجهات ذات النفع العام تمكين أدوات مزاوله النشاط الاقتصادي من الانتفاع بأي عقار من العقارات المملوكة أو التابعة لها في</p>	
---	---

<p>الأغراض المسموح بها قانوناً وبمقابل مالي لا يقل عما هو معمول به في الانتفاع بالأماكن العامة ، وبمراعاة الضوابط التالية :-</p> <p>1- الإعلان عن الانتفاع بالعقار بإحدى طرق الإعلان المتعارف عليها للحصول على أنسب العروض انتفاعاً .</p> <p>2- إبرام عقد الانتفاع بين الطرفين يكون محدد المدة وقابل للتجديد .</p> <p>3- أن يكون العقار مناسباً وملاماً لنشاط الجهة المنتفعة .</p> <p>4- ألا يؤدي الانتفاع إلى إحداث تغييرات جوهريه على العقار وألا يحدث أضراراً تؤثر على قيمته أو على استغلاله في الغرض الذي أعد له .</p> <p>5- ألا يؤثر على نشاط الجهة المالكة أو الإضرار بها .</p> <p>6- أن تكون القيمة المحددة للانتفاع ملائمة لقيمة العقار وموقعه ونوعه .</p> <p>7- ألا يؤدي الانتفاع بالعقار أو بالمرافق الملحقة به إلى تملكه .</p> <p>مادة (98)</p> <p>يجوز لأدوات مزاوله النشاط الاقتصادي المنصوص عليها في هذه اللائحة استخدام الغير بمقابل ، وذلك في الحالات التي يفضل فيها صاحب الشأن عدم الدخول في المشاركة والعمل بمقابل وفقاً للاشتراطات التالية :-</p> <p>1. أن يقدم المستخدم إقراراً مكتوباً يفصح فيه صراحة عن رغبته في عدم المشاركة وتضيله العمل بمقابل مادي ، وأن الإقرار صدر باختياره و بملأه الحرة ، ولم يكن مكرهاً أو مضطراً في إصداره ( ويكون الإقرار وفق النموذج المرفق ) .</p> <p>2. أن يكون المستخدم بموجب عقد مكتوب ومبرم وفقاً لأحكام قانون العمل ، ومنسجماً مع النموذج الاسترشادي لعقد الاستخدام ( المرفق ) .</p> <p>3. أن يكون المستخدم مدركاً وبالغاً للسّن القانونية وكامل الأهلية .</p> <p>4. أن يكون المقابل المادي المتفق عليه موازٍ للجدد المبذول .</p>	
---	---

<p>مادة (99)</p> <p>تتولى أمانة اللجنة الشعبية العامة دورياً وضع ضوابط إسناد تنفيذ المشروعات للشركات بما يتناسب مع رأس مالها وعدد المساهمين بها بناءً على اقتراح من أمين اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار .</p> <p>مادة (100)</p> <p>على أدوات مزاوله الأنشطة الاقتصادية القائمة وقت صدور هذه اللائحة تسوية أوضاعها بما يتفق وأحكامها خلال أجل أقصاه نهاية العام ( 2006 مسيحي ) وتعتبر الأدوات التي لا تسوي أوضاعها وفقاً لذلك ملحقة قانوناً دون الحاجة إلى أي إجراء آخر ، ويتعين شطبها من السجل التجاري .</p> <p>وتتولى اللجان الشعبية للاقتصاد والتجارة والاستثمار والقطاعات ذات العلاقة من خلال مأموري الضبط القضائي بها متابعة قيام أدوات مزاوله الأنشطة الاقتصادية بتصحيح أوضاعها .</p>	
--	---

<p><b>Article (96)</b></p> <p>The productive projects for export of all or part of their products shall be supported / subsidized in any of the following ways:</p> <ol style="list-style-type: none"> <li>1- Exemption from payment of the land price / cost and use thereof for productive projects.</li> <li>2- Promotion / encouragement of marketing of local commodities and services in forging markets, and providing incentives for local exporters for participation in International Fairs, including organisation of commercial missions to abroad and local Fairs in particular.</li> <li>3- Providing commercial and economic information and consultancy services on foreign markets for local exporters, in cooperation with the relevant bodies, and ascertaining the obstacles which may be encountered thereby and removal thereof.</li> </ol>
---

<ol style="list-style-type: none"> <li>4- To provide technical, financial and administrative support for exporters of local commodities and services.</li> <li>5- Development of packing, sorting and wrapping services as per the criteria specified in this respect.</li> <li>6- Providing the necessary loans and guarantees for making the export program successful.</li> </ol>
--

### Chapter Eleven

#### Article (97)

The Administrative Units, General Companies and other bodies may enable the tools / bodies for performing economic activity to use any real estate owned thereby or pertaining thereto for the legally allowed purposes, against fees not less than those applicable to use of public places, in observance of the following rules:

- 1- Advertisement on the use / lease of the real estate in any recognized methods in this respect for the most suitable use thereof.
- 2- Signing leave contracts between both parties, with definite period, to be renewable.
- 3- The real estate shall be suitable for the activity of the user lessee.
- 4- The use shall not cause substantial changes affecting its value or use for the relevant purpose.
- 5- Not to affect the activity of the Owner or causing damage thereto.
- 6- The rental value shall compatible with the real estate value, its location and type.
- 7- The use / lease of the real estate or the utilities attached thereto shall not lead to ownership thereof.

#### Article (98)

The tools / bodies for performing economic activity as specified herein may employ others against fees, in the Cases where the persons concerned prefer non-entry into partnership, and work against fees, under the following conditions:

- 1- The employee shall submit written declaration, stating therein explicitly his desire for non-partnership and preferences to work against material fees / remuneration, and the declaration is issued by his option and free will, and was not force or obliged to issue it (The declaration shall be as per the attached Form).
- 2- Employment shall be under written contract signed under the provisions of Labour Law, and compatible with the Guiding Form for contracted of employment (attached hereto).
- 3- The Employee shall be adult reaching legal age and fully eligible.
- 4- The material remuneration agreed upon shall be compatible with the efforts exerted.

#### Article (99)

The Secretariat of General People's Committee shall periodically set out the rules for entrusting execution of projects to the Companies, as compatible with their capital and number of shareholders therein, upon proposal of Secretary of General People's Committee for Economy, Commerce and Investment.

#### Article (100)

The tools / bodies for performing economic activities, existent at the time of issue of this Regulation shall settled their situation compliance with its provisions, within a maximum period by the end of 2006. The bodies which do not settle their situations accordingly shall be considered as legally dissolved, without need for any other procedure, and shall be deleted from the Commercial Register.

The People's Committees for Economy, Commerce and Investment, and the relevant sectors shall, through Law Enforcement Officers, follow up correction of bodies for performing economic activities for their situations.



## Text 30

مادة (101)

لأعضاء الحرس البلدي وغيرهم من مأموري المصبط القضائي حق الدخول إلى أماكن مزاوله الأنشطة الخاضعة لأحكام هذه اللائحة للتحقق من تنفيذ أحكامها ، ومن تنفيذ شروط الترخيص ، وذلك وفقاً للتشريعات النافذة .

نموذج عقد استخدام

مادة (1)

تم الاتفاق بين كل من :-

1- جهة العمل / ويمثلها الأخ / ..... صفته / ..... ومقرها / ..... نشاطها / ..... هاتف / ..... من باب ..... ويشار إليها في العقد بالطرف الأول.

2- الأخ / ..... تاريخ ومكان الميلاد / ..... رقم البطاقة الشخصية / ..... وعنوان سكنه / ..... ومهنته أو حرفته / ..... المؤهل العلمي / ..... ويشار إليه في هذا العقد بالطرف الثاني .

مادة (2)

يقوم الطرف الثاني بأداء الأعمال التالية :-

.....

.....

مادة (3)

يكون المقابل المادي لأداء الأعمال المشار إليها في المادة (2) مبلغ شهري قدره .....

مادة (4)

تكون مدة العقد ..... اعتباراً من / / إلى / /

مادة (5)

يستحق الطرف الثاني إجازة سنوية بمقابل مدتها .....

مادة (6)

يلتزم الطرف الثاني بما يلي :-

- القيام بالعمل المتفق عليه بنفسه بدقة وأمانة .
- المحافظة على الأشياء المسلمة إليه لتأدية عمله والمحافظة على أسرار العمل خلال وبعد انتهاء العقد.
- أن يتقاضي كل ما من شأنه إحداث ضرر بجهة العمل أو إخلال بالأمن العام أو الأدب العامة.

مادة (7)

يلتزم الطرف الأول بتأدية حقوق الطرف الثاني كاملة وعدم إنقاصها أو حجبها وعلى الأخص مايلي:-

- عدم تكليف الطرف الثاني بأية أعمال تتنافى مع طبيعته وقدرته وإمكاناته .
- تمكين الطرف من التمتع بإجازته وعدم قطعها إلا لضرورة .
- دفع المقابل المتفق عليه وفقاً لتاريخ استحقاقه .
- عدم نقل الطرف الثاني إلى مهنة أو حرفة أو مكان عمل المتفق عليه إلا بعد موافقة كتابية.

مادة (8)

تعتبر النصوص المنظمة لإجراءات العمل والاستخدام والتشريعات النافذة جزءاً لا يتجزأ من العقد ، وتسرى بشأنه أحكام قانون العمل وتعديلاته .

توقيع الطرف الأول

توقيع الطرف الثاني

### Article (101)

The members of Municipal guards and other Law Enforcement Officer shall have the right to enter into the places of performing economic activities, as governed by the provisions of this Regulation for ascertaining implementation thereof and fulfilling Licensing conditions, under the effective legislations

### Contract of Employment Form

#### Article (1)

This agreement is made between:

- 1- The Employer ..... , represented herein by ..... being ..... , domiciled in activity ..... , Tel ..... , P. O. Box No. .... , referred to hereinafter as the First Party.
- 2- Mr. .... , date and place of birth ..... , ID Card No. .... , home address ..... , job or craft ..... , academic qualification ..... , referred to hereinafter as the Second Party.

#### Article (2)

The material remuneration against performance of the works indicated in Article (2) above shall be in a monthly amount of (LD .....).

#### Article (4)

The contract period is ..... , as from ..... to .....

#### Article (5)

The Second Party shall entitled to annual leave with pay for a period of .....

#### Article (6)

The Second Party shall abide by the following:

- To perform the work agreed upon by himself carefully and honestly.

- To maintain the things delivered thereto for performing his work, and keep the secrets of work during and after expiry of the contract.
- To avoid anything as would cause damage to the Employer or violation of public security and morale.

#### Article (7)

The First Party shall fulfill the rights of the Second Party fully and shall not decrease or retain them, especially the following:

- Not to designate the Second Party for any work contradicting the nature of his work, capability and potentials.
- To enable the Second Party to enjoy his leave, and not to cut it, unless necessary.
- To pay the remuneration agreed upon on the date of its dueness.
- Not to transfer the Second Party to a job, craft or place of work other than that agreed, except after his written consent.

#### Article (8)

The regulation for work procedures and employment, and the effective legislations shall be considered as an integral part of the contract, and the provisions of Labour Law and its amendments shall be applicable thereto.

#### Signatures

First Party

Second Party


## Text 31

**إقرار بالرغبة في العمل بمقابل مادي**

أنا ..... بطاقة شخصية رقم /.....  
 تاريخ الميلاد ..... مكان الميلاد .....  
 مهنتي أو حرفتي ..... ومستواي التعليمي .....

أتقدم بهذا الإقرار منصفاً عن اختياري وبارئتي الحرية عن رغبتي في العمل بمقابل مادي وفق قانون العمل وتعديلاته ، حيث لا توجد لدى الرغبة في أن أكون شريكاً في جهة العمل التي أعمل بها .

والسلام عليكم ورحمة الله وبركاته



اسم وتوقيع مقدم الإقرار .....


**الجمهورية العربية الليبية الشعبية الاشتراكية العظمى**

لجنة الشعبية العامة للاقتصاد والتجارة والاستثمار

مكتب ترخيص مدينة .....  
 رقم السجل .....  
 نوع الرخصة المطلوبة.....

طلب الحصول على رخصة  
 مزاولة نشاط اقتصادي

1- اسم المالك ولقبه (رباعياً) .....  
 2- اسم الوالد .....  
 3- اسم الوالد .....  
 4- تاريخ ومحل الميلاد .....  
 5- الجنسية .....  
 6- العنوان الذي يرغب في مكتبته عليه .....  
 7- عمله الحالي .....  
 8- نوع الرخصة المطلوبة .....  
 9- نوع النشاط (يذكر بالتفصيل) .....  
 10- اسم مسؤول المحل إن وجد (رباعياً) .....  
 11- تاريخ ميلاده .....  
 12- موقع المحل المراد الترخيص فيه وعنوانه والمنطقة السكنية بها .....  
 13- القوى الكهربائية الموجودة بالمحل لأغراض التشغيل .....  
 14- عدد الشركاء .....  
 15- أية بيانات أو معلومات أخرى يرغب المالك في ذكرها .....  
 16- حرر في ..... الموافق .....  
 توقيع المالك .....  
 رقم البطاقة الشخصية .....



### Declaration for Desire for Work against Material Remuneration

I, the undersigned, ..... ID Card No. ...., date of birth ....., place of birth ....., job or craft ....., Educational level ....., submit this declaration, indicating my choice by my free will and desire for work against material remuneration under Labour Law and its amendments. I am not desirous to be a partner with the Employer with whom I work.

With best regards,

Name and Signature of the Declarant

### GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA General People's Committee for Economy, Commerce and Investment

Licensing Office in ..... City

#### Form No. (1)

(To be submitted in an original and copy)  
 (Duty Stamp)

Reg. No.: .....  
 Type of required license: .....

#### Application for Obtaining License for Performing Economic Activity

- 1- Full name and surname of applicant: .....
- 2- Father's name: .....
- 3- Mother's name: .....
- 4- Date and place of birth: .....
- 5- Nationality: .....
- 6- Address for correspondence: .....
- 7- Present work: .....
- 8- Type of license required: .....
- 9- Type of activity (Indicate in detail): .....
- 10- Name of responsible person for the shop if any: .....
- 11- Date of birth: .....
- 12- Location of the place / shop to be licensed, address and relevant area: .....
- 13- Electrical and mechanical power existent in the place for the purposes of operation: .....
- 14- No. of partners: .....
- 15- Any other data or information to be indicated by the applicant: .....
- 16- Made on: ..... Corresponding to: .....

Signature of applicant: .....  
 ID Card No.: .....

## Text 32

**الجمهورية العربية الليبية الشعبية الاشتراكية العظمى**

اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار

نموذج رقم (2) يقدم من  
أحد : صيد

مكتب ترخيص مدينة .....

رقم السجل .....  
نوع الرخصة المطلوبة.....

طلب تجديد رخصة

1. اسم الطالب ولقبه (إرباعاً).....
2. العنوان الحالي.....
3. نوع الرخصة ورقمها.....
4. تاريخ انتهاء صلاحية الرخصة.....
5. موقع المحل المرخص فيه وعنوان والمنطقة للكان بها.....
6. المدة المطلوبة للتجديد.....
7. تعديل أو إضافة للنشاط المرخص به أو في المحل المرخص له.....
8. القوي الكهربائية الموجودة.....
- 9- عدد الشركاء.....
- حرر في..... الموافق.....

طالب.....  
رقم البطاقة الشخصية.....

**الجمهورية العربية الليبية الشعبية الاشتراكية العظمى**

اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار

نموذج رقم (3)

مكتب ترخيص مدينة .....

طابع ضريبة الدمغة

صورة المرخص له إذا  
كان شخصاً طبيعياً

رخصة صناعية

اسم صاحب الرخصة :..... مكان مزاولة النشاط.....

رقم رخصة.....

بعد الإطلاع على الطلب المقدم من.....

وعلى التشريعات النافذة في شأن مزاولة الأنشطة الاقتصادية وتشريعات ذات العلاقة .

يرخص

ل.....

بمزاولة.....

بالمحل للكان.....

أوصاف المحل.....

عدد شركاء أو المملين بالأرقام والحروف.....

الطاقة المحركة ( الكهربائية أو الميكانيكية ).....

مواعيد العمل المصرح بها شتاءً من أول شهر الثمور حتى آخر شهر الطيور.....

مواعيد العمل المصرح بها صيفاً من أول شهر الماء حتى آخر شهر القاتح.....

هذه الرخصة صالحة إلى.....

مع مراعاة ما يأتي :-

- 1- توفر الشروط والمتطلبات المنصوص عليها في القانون رقم (22) لسنة 1989 م بشأن تنظيم الصناعي ولائحته التنفيذية .
- 2- هذا الترخيص شخصي ، ولا يجوز تنازله عنه للغير .
- 3- لا يجوز إجراء أي تعديل أو تغيير .
- 4- على المرخص له تجديد الرخصة خلال ثلاثة أشهر سابقة على انتهائها .
- 5- على المرخص له في ممارسة نشاطه مراعاة التشريعات النافذة .
- 6- على المرخص له تجديد الرخصة خلال ثلاثة أشهر سابقة على انتهائها .
- 7- يجب وضع هذه الرخصة في مكان بارز من المحل أو في مكان تحدده الجهة المختصة .

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
General People's Committee for  
**Economy, Commerce and Investment**

Licensing Office in ..... City

**Form No. (2)**

(To be submitted in an original and copy)  
(Duty Stamp)

Reg. No.: .....  
Type of required license: .....

**Application for Renewal of License**

- 1- Full name and surname of applicant: .....
- 2- Present address: .....
- 3- Type and No. of license: .....
- 4- Date of expiry of license validity: .....
- 5- Location of the licensed place / shop, address and relevant area: .....
- 6- Period required for renewal: .....
- 7- Any amendment or addition to the licensed activity or place / shop: .....
- 8- Electrical or mechanical power existent: .....
- 9- No. of partners: .....

Made on: ..... Corresponding to: .....

Signature of applicant: .....  
ID Card No.: .....

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
General People's Committee for  
**Economy, Commerce and Investment**

Licensing Office in ..... City

**Form No. (3)**

(Duty Stamp)

(Photo of Licensee if a Natural Person)

**INDUSTRIAL LICENSE**

Name of Licensee: .....

Place of performing the activity: .....

License No.: .....

After perusal of the application submitted by: .....

And the effective legislations for performing economic activities and relevant legislations, it is hereby licensed for: .....

For performing: .....

In the place located: .....

Description of the place: .....

No. of partners or workers in figures and letters: .....

Motion power (Electrical or Oil): .....

Working hours authorised in winter (from 1<sup>st</sup> Oct to 30<sup>th</sup> April): .....

Working hours authorised in summer (from 1<sup>st</sup> May to 30 Sept.): .....

This license is valid until: .....

The following should be noted:

- 1- To fulfill the conditions and requirements specified in Law No. (22) of 1989 regarding industrial organisation and its executive regulation.
- 2- This license is personal and shall not be assigned to others
- 3- It is not allowed to make any amendment or change hereto.
- 4- The licensee shall renew the license within three months before its expiry
- 5- The licensee shall, in performing his activity, observe the effective legislations.
- 6- The licensee shall renew the license within three months before its expiry
- 7- The license should be put in a visible place in the shop or as specified by the competent Committee



## Text 33

**الجمهورية العربية الليبية الشعبية الاشتراكية المعظم**  
**اللجنة الشعبية العامة للاقتصاد والتجارة والاقتصاد والاستثمار**

الاسم : ..... رقم الرخصة : .....  
مكتب ترخيص منبنة : .....

نموذج رقم (4)

طابع ضريبة الدمغة

صورة المرخص له إذا كان شخصاً طبيعياً

رخصة تجارية

اسم صاحب الرخصة : ..... مكان مزاولة النشاط : .....  
رقم رخصة : .....  
بعد الإطلاع على الطلب المقدم من .....  
وعلى التشريعات النافذة في شأن مزاولة الأنشطة الاقتصادية والتشريعات ذات العلاقة .

يرخص

لـ .....  
بمزاولة .....  
بالمحل الكائن .....  
هذه الرخصة صالحة إلى .....  
مع مراعاة ما يأتي :-

1- هذا الترخيص شخصي ، ولا يجوز التنازل عنه للغير .  
2- لا يجوز للمرخص له أن يمارس نشاطاً غير منصوص عليه في الرخصة ولا يجوز إجراء أي تعديل أو تغيير .  
3- على المرخص له تجديد الرخصة خلال ثلاثة أشهر السابقة على انتهائها .  
4- على المرخص له في ممارسة نشاطه مراعاة القوانين واللوائح والقرارات المعمول بها .  
5- يجب وضع هذه الرخصة في مكان بارز من المحل أو في مكان تحدده الجهة المختصة .  
سندت عليها الرسوم بالإصصال رقم ..... بتاريخ ..... بقيمة : .....  
بالأرقام ( د ل ) بالعروف .....  
صدرت بتاريخ .....  
مكتب ترخيص منبنة : .....  
الموافق : .....  
رقم الرخصة : .....  
الصادرة في : .....  
الموافق : .....

**الجمهورية العربية الليبية الشعبية الاشتراكية المعظم**  
**اللجنة الشعبية العامة للاقتصاد والتجارة والاقتصاد والاستثمار**

الاسم : ..... رقم الرخصة : .....  
مكتب ترخيص منبنة : .....

نموذج رقم (5)

طابع ضريبة الدمغة

صورة المرخص له إذا كان شخصاً طبيعياً

رخصة مهنية / حرفية / تدريبية

اسم صاحب الرخصة : ..... مكان مزاولة النشاط : .....  
رقم رخصة : .....  
بعد الإطلاع على الطلب المقدم من .....  
وعلى القانون رقم (21) لسنة 1369 و . ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية وتعديلاته واتحسه تنفيذه ، وتشريعات ذات العلاقة .

يرخص

لأخ (الاسم رباعياً) .....  
بمزاولة .....  
بالمحل الكائن .....  
هذه الرخصة صالحة إلى .....  
مع مراعاة ما يأتي :-

6- هذا ترخيص شخصي ، ولا يجوز التنازل عنه للغير .  
7- لا يجوز للمرخص له أن يمارس نشاطاً غير منصوص عليه في الرخصة ولا يجوز إجراء أي تعديل أو تغيير .  
8- يجب وضع هذه الرخصة في مكان بارز من المحل أو في مكان تحدده الجهة المختصة .  
9- على المرخص له في ممارسة نشاطه مراعاة القوانين واللوائح والقرارات المعمول بها .  
10- على المرخص له تجديد الرخصة خلال ثلاثة أشهر السابقة على انتهائها .  
11- ما يكتسب موافقة أو إذن الجهة المختصة على التجديد في الحالات التي تنص فيها التشريعات النافذة ذلك .  
سندت عليها الرسوم بالإصصال رقم ..... بتاريخ ..... بقيمة : .....  
بالأرقام ( د ل ) بالعروف .....  
صدرت بتاريخ .....  
للجنة الشعبية .....  
الموافق : .....  
رقم الرخصة : .....

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
**General People's Committee for**  
**Economy, Commerce and Investment**

Licensing Office in ..... City

**Form No. (4)**  
(Duty Stamp)

(Photo of Licensee if a Natural Person)

**COMMERCIAL LICENSE**

Name of Licensee: .....  
Place of performing the activity: .....  
License No.: .....  
After perusal of the application submitted by: .....  
And the effective legislations for performing economic activities and relevant legislations, it is hereby licensed for: .....

For performing: .....  
In the place located: .....  
This license is valid until: .....

**The following should be noted:**

- 1- This license is personal and shall not be assigned to others.
- 2- The licensee shall not practice any other activity than that licensed for nor make any amendment thereto.
- 3- The licensee shall renew the license within three months before its expiry
- 4- The licensee shall, in performing his activity, observing the laws, regulations and decisions in force.
- 5- This license should be put in a visible place in the shop or as specified by the competent Committee

Fees paid under receipt No.: ..... Dated: .....  
In the amount of LD ..... (..... Libyan Dinars)  
Issued on ..... corresponding to: .....

Licensing Office in ..... City  
License No. ....

Issued on: ..... corresponding to: .....  
The license has been renewed without any amendment until .....  
Fees paid under receipt No. .... dated: .....  
In the amount of LD ..... (..... Libyan Dinars)

Licensing Office in ..... City  
License No. ....

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
**General People's Committee for**  
**Economy, Commerce and Investment**

Licensing Office in ..... City

**Form No. (5)**  
(Duty Stamp)

(Photo of Licensee if a Natural Person)

**VOCATIONAL / CRAFT / TRAINING LICENSE**

Name of Licensee: .....  
Place of performing the activity: .....  
License No.: .....  
After perusal of the application submitted by: .....  
And Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic activity and its effective legislations, and relevant legislations, it is hereby licensed for: .....

Full name: .....  
For performing: .....  
In the place located: .....  
This license is valid until: .....

**The following should be noted:**

- 1- This license is personal and shall not be assigned to others.
- 2- The licensee shall not practice any other activity than that licensed for nor make any amendment thereto.
- 3- This license should be put in a visible place in the shop or as specified by the competent body
- 4- The licensee shall, in performing his activity, observe the laws, regulations and decisions in force.
- 5- The licensee shall renew the license within three months before its expiry
- 6- To provide certificate of approval or permission from the competent body for renewal in the cases required by the effective legislations.

Fees paid under receipt No.: ..... Dated: .....  
In the amount of LD ..... (..... Libyan Dinars)  
Issued on ..... corresponding to: .....

Licensing Office in ..... City  
License No. ....

Issued on: ..... corresponding to: .....  
The license has been renewed without any amendment until .....  
Fees paid under receipt No. .... dated: .....  
In the amount of LD ..... (..... Libyan Dinars)

Licensing Office in ..... City  
License No. ....

## Text 34

**الجمهورية العربية الليبية الشعبية الاشتراكية العظمى**  
**اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار**

الاسم: ..... رقم الرخصة: .....  
 مكتب ترخيص مدينة: .....

نموذج رقم (6)

شعار جمهورية ليبيا

صورة المرخص له إذا  
 كان شخصاً طبيعياً

رخصة عامة

اسم صاحب الرخصة: ..... مكان مزاولة النشاط: .....  
 رقم رخصة: .....  
 بعد الإطلاع على الطلب المقدم من .....  
 وعلى القانون رقم (21) لسنة 1369 و. ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية وتنظيماته ولائحته  
 التنفيذية، وتشريعات ذات العلاقة .  
 يرخص  
 للأح (الاسم ربيعاً) .....  
 بمزاولة .....  
 بالعمل كالتن .....  
 أو صنف المحل: .....  
 عدد الأشخاص المسموح ببيعهم .....  
 مواعيد العمل المصرح بهما شتاءً من أول شهر الثور حتى آخر شهر الطير .....  
 مواعيد العمل المصرح بهما صيفاً من أول شهر قماء حتى آخر شهر الفتح .....  
 هذه الرخصة صالحة إلى .....  
 مع مراعاة ما يأتي :-  
 1- هذا الترخيص شخصي ، ولا يجوز لتنازل عنه للغير .  
 2- لا يجوز للمرخص له أن يمارس نشاطاً غير منصوص عليه في الرخصة ولا يجوز إجراء أي تعديل أو  
 تغيير .  
 3- على المرخص له تجديد الرخصة خلال ثلاثة أشهر السابقة على انتهائها .  
 4- على المرخص له في ممارسة نشاطه مراعاة القوانين واللوائح والقرارات المعمول بها.

**الجمهورية العربية الليبية الشعبية الاشتراكية العظمى**  
**اللجنة الشعبية العامة للاقتصاد والتجارة والاستثمار**

الاسم: ..... رقم الرخصة: .....  
 مكتب ترخيص مدينة: .....

نموذج رقم (7)

شعار جمهورية ليبيا

صورة المرخص له إذا  
 كان شخصاً طبيعياً

رخصة متجولة

اسم صاحب الرخصة: ..... مكان مزاولة النشاط: .....  
 رقم رخصة: .....  
 بعد الإطلاع على الطلب المقدم من .....  
 وعلى القانون رقم (21) لسنة 1369 و. ر بتقرير بعض الأحكام في شأن مزاولة الأنشطة الاقتصادية وتنظيماته ولائحته  
 التنفيذية، وتشريعات ذات العلاقة .  
 يرخص  
 للأح (الاسم ربيعاً) .....  
 المولود في سنة ..... والمقيم .....  
 رقم البطاقة الشخصية: .....  
 دائرة العمل المصرح بها .....  
 هذه الرخصة صالحة إلى .....  
 سددت عليها الرسوم بالإصاى رقم ..... بتاريخ .....  
 بقيمة : بالأرقام ( ..... ل ..... ) بالحروف .....  
 صدرت بتاريخ ..... مكتب ترخيص مدينة .....  
 الموافق: .....

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
**General People's Committee for**  
**Economy, Commerce and Investment**

Licensing Office in ..... City  
 Name ..... License No.: .....

Form No. (6)  
 (Duty Stamp)

(Photo of Licensee if a Natural Person)

**GENERAL LICENSE**

Name of Licensee: .....  
 Place of performing the activity: .....  
 License No.: .....  
 After perusal of the application submitted by: .....  
 And Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic  
 activity and its effective legislations, and relevant legislations, it is hereby licensed for:  
 .....  
 For performing: .....  
 In the place located: .....  
 Description of the place: .....  
 No. of partners or workers in figures and letters: .....  
 Working hours authorised in winter (from 1<sup>st</sup> Oct to 30<sup>th</sup> April): .....  
 Working hours authorised in summer (from 1<sup>st</sup> May to 30 Sept.): .....  
 This license is valid until: .....

The following should be noted:  
 1- This license is personal and shall not be assigned to others  
 2- The licensee shall not perform any other activity unspecified herein nor make any amendment or  
 change thereto.  
 3- The licensee shall renew the license within three months before its expiry  
 4- The license shall in performing his activity, observe the laws, regulations and decision applicable

Fees paid under receipt No.: ..... Dated: .....  
 In the amount of LD ..... (..... Libyan Dinars)  
 Issued on ..... corresponding to: .....

Licensing Office in ..... City  
 License No. ....

Issued on: ..... corresponding to: .....  
 The license has been renewed without any amendment until .....  
 Fees paid under receipt No. .... dated: .....  
 In the amount of LD ..... (..... Libyan Dinars)

Licensing Office in ..... City  
 License No. ....

**GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA**  
**General People's Committee for**  
**Economy, Commerce and Investment**

Licensing Office in ..... City  
 Name ..... License No.: .....

Form No. (7)  
 (Duty Stamp)

(Photo of Licensee if a Natural Person)

**HAWKER LICENSE**

Name of Licensee: .....  
 Place of performing the activity: .....  
 Hawker License No.: .....  
 After perusal of: .....  
 And Law No. (21) of 1369 PD (2001) for specifying certain provisions for performing economic  
 activity and its effective legislations, and relevant legislations, it is hereby licensed for:  
 Born in: ..... on: ..... resident in: .....  
 For performing: .....  
 Are of work allowed: .....  
 This license is valid until: .....

Fees paid under receipt No.: ..... Dated: .....  
 In the amount of LD ..... (..... Libyan Dinars)  
 Issued on ..... corresponding to: .....

General notes:  
 1- The license shall be carried during performance of work, job and craft for which it is issued  
 2- The license shall be presented upon request to policemen, or Municipal, Guards and others  
 competent officials  
 3- To adhere to the area of work allowed for performing the licensed activity  
 4- Standing in the prohibited place is not allowed.  
 5- Hawkers shall not chase the public nor stand near the shops selling similar items, nor promote their  
 goods in a way causing disturbance or calling for that between 7:00 p.m. and 8:00 a.m., and between  
 1:00 - 4:00 p.m.

Issued on ..... corresponding to: .....  
 Licensing Office in ..... City  
 License No. ....

Issued on: ..... corresponding to: .....  
 The license has been renewed without any amendment until .....  
 Fees paid under receipt No. .... dated: .....  
 In the amount of LD ..... (..... Libyan Dinars)

Licensing Office in ..... City  
 License No. ....



## Text 35

### قانون رقم ( 23 ) لسنة 1378 و.ر ( 2010 مسيحي ) بشأن النشاط التجاري

#### مؤتمر الشعب العام .

- تنفيذًا لقرارات المؤتمرات الشعبية الأساسية في دور انعقادها العام السنوي للعام 1377 و.ر.
- وبعد الاطلاع على الإعلان عن قيام سلطة الشعب .
- وعلى الوثيقة الخضراء الكبرى لحقوق الإنسان في عصر الجماهير .
- وعلى القانون رقم (20) لسنة 1991 مسيحي ، بشأن تعزيز الحرية .
- وعلى القانون رقم (1) لسنة 1375 و.ر ، بشأن نظام عمل المؤتمرات الشعبية واللجان الشعبية .
- وعلى القانون التجاري وتعديلاته .
- وعلى القانون رقم (40) لسنة 1956 مسيحي ، بشأن العلامات التجارية وتعديله .
- وعلى القانون رقم (73) لسنة 1958 مسيحي ، بشأن الموازين والمكاييل والمقاييس .
- وعلى القانون رقم (2) لسنة 1962 مسيحي ، بشأن البيانات التجارية .
- وعلى القانون رقم (38) لسنة 1968 مسيحي ، بشأن التصدير والاستيراد .
- وعلى القانون رقم (65) لسنة 1970 مسيحي ، بتقرير بعض الأحكام الخاصة بالتجار والشركات التجارية والإشراف عليها وتعديلاته .
- وعلى القانون رقم (64) لسنة 1971 مسيحي ، بشأن الاستيراد .
- وعلى القانون رقم (110) لسنة 1975 مسيحي ، بتقرير أحكام خاصة بالهيئات والمؤسسات ، العامة وشركات القطاع العام .
- وعلى القانون رقم (17) لسنة 1977 مسيحي ، بشأن تنظيم مزاوله الأعمال التجارية .
- وعلى القانون رقم (8) لسنة 1984 مسيحي ، بشأن الضوابط الخاصة بالتعامل التجاري وتعديله .
- وعلى القانون رقم (9) لسنة 1985 مسيحي ، بشأن بعض الأحكام الخاصة بالتشاريكات وتعديله .
- وعلى القانون رقم (8) لسنة 1988 مسيحي ، بشأن الأحكام المتعلقة بالنشاط الاقتصادي .
- وعلى القانون رقم (13) لسنة 1989 مسيحي ، بشأن الرقابة على الأسعار وتعديله .
- وعلى القانون رقم (9) لسنة 1992 مسيحي ، بشأن مزاوله الأنشطة الاقتصادية .
- وعلى القانون رقم (15) لسنة 1423 ميلادية ، بتقرير بعض الأحكام المتعلقة بالشركات المساهمة المملوكة كلياً أو جزئياً للمجتمع .
- وعلى القانون رقم (4) لسنة 1425 ميلادية ، بتحريم اقتصاد المضاربة وتعديلاته .
- وعلى القانون رقم (4) لسنة 1426 ميلادية ، بشأن تنظيم استيراد وتوزيع السلع .
- وعلى القانون رقم (21) لسنة 1369 و.ر ، بتقرير بعض الأحكام في شأن مزاوله الأنشطة الاقتصادية وتعديله .
- وعلى القانون رقم (6) لسنة 1372 و.ر ، بشأن تنظيم أعمال الوكالات التجارية .
- وعلى القانون رقم (3) لسنة 1374 و.ر ، بشأن شركات القطاع العام .
- وعلى القانون رقم (2) لسنة 1375 و.ر ، بتنظيم التفقيش والرقابة الشعبية .
- وعلى القانون رقم (3) لسنة 1375 و.ر ، بشأن إنشاء وتنظيم جهاز المراجعة المالية .
- وعلى القانون رقم (4) لسنة 1372 و.ر ، بشأن غرف التجارة والصناعة والاتحاد العام للغرف .
- وعلى القانون رقم (9) لسنة 1378 و.ر ، بشأن تشجيع الاستثمار .
- وعلى القانون رقم (11) لسنة 1378 و.ر ، بشأن سوق المال .
- وعلى القانون رقم (12) لسنة 1378 و.ر ، بشأن علاقات العمل .

#### صاغ القانون الآتي

### Law No. 23 for the Year 1378 PD 2010 Regarding Commercial Activities General People's Congress

- In execution of Decision of the Basic People's Congresses in their annual session held for the year 1377 PD (2009), and
- Having seen the declaration of outbreak of the People's Authority, and
- The Grand Green Charter for Human Rights In the Era of Masses
- Law No. (20) for the year 1991 regarding enhancement of freedom, and
- Law No. (1) of 1375 PD (2007) regarding work system for People's Congresses and Committees.
- The Commercial Law, and its amendment.
- Law No. (58) for the year 1970 in respect of the work and its amendments, and
- The Libyan Commercial Law issued in 1953 and its amendments, and
- Law No. (40) for the year 1956 regarding trademarks and its amendment, and
- Law No. (73) for the year 1958 regarding scales, measures and standards, and
- Law No. (2) for the year 1962 regarding commercial data, and
- Law No. (38) for the year 1968 regarding export and import, and
- Law No. (65) of 1970 for specifying certain provisions for merchants, and trading companies and supervision thereof, and its amendments.
- Law No. (64) for the year 1971 regarding importation, and
- Law No. (110) for year 1975 regarding deciding some provisions related to public bodies, establishment and public sector companies, and
- Law No. (17) for year 1977 regarding organization of practicing commercial activities, and
- Law No. (8) for the year 1984 regarding rules of commercial dealings and its amendment, and
- Law No. (9) for the year 1985 regarding provisions in respect of partnerships (Tasharukiat) and its amendment, and
- Law No. (8) for the year 1988 regarding provisions related to economic activity, and
- Law No. (13) for the year 1989 regarding control over prices and its amendment, and.
- Law No. (9) for the year 1992 regarding practicing of economic activities, and
- Law No. (15) for year 1423 PB (1993) in respect of deciding some provisions related to joint-stock companies wholly or partially owned by the community, and
- Law No. (4) for the year 1425 PB (1995) on prevention of economy of speculation and its amendments, and
- Law No. (4) for the year 1426 PB (1996) regarding organization of importation and distribution of goods, and
- Law No. (21) for the year 1369 PD (2001) regarding certain provisions for practicing economic activities and its amendment, and
- Law No. (6) for the year 1372 D regarding organization of commercial agencies, and
- Law No. (3) for the year 1374 PD (2006) regarding public sector companies, and
- Law No. (2) for the year 1375 PD (2007) regarding organization of Inspection and People's Control, and
- Law No. 3 for the year 1375 PD 2007 regarding establishing and organizing Financial Audit Authority.
- Law No. (4) for the year 1372 PD (2004) regarding Chambers of Commerce, Industry and General Association of Chambers, and
- Law No. (9) for the year 1378 PD (2010) regarding investment promotion.

*Formulated the following Law:*



## Text 36

<p>الكتاب الأول في مزاولة الأنشطة الاقتصادية الباب الأول أحكام عامة مادة (1) نطاق تطبيق هذا القانون</p> <p>يتضمن هذا القانون الأحكام المتعلقة بالأنشطة الاقتصادية التي يقوم بها أي شخص مهما كانت صفته القانونية ، كما يتضمن الأحكام المنظمة لأدوات ممارسة النشاط الاقتصادي و المتمثلة في النشاط الفردي والنشاط الأسري والتشاريكات والشركات وغير ذلك من الأحكام القانونية ذات الصلة الوثيقة بالنشاط الاقتصادي .</p> <p>مادة (2) مدى تطبيق القانون المدني</p> <p>تطبق على الأنشطة الاقتصادية أحكام القانون المدني ، فيما لم يرد بشأنه نص في هذا القانون .</p> <p>على أن تطبيق هذه الأحكام لا يكون إلا بمقدار اتفاقها مع المبادئ العامة في هذا القانون .</p> <p>مادة (3) تطبيق السوابق القضائية ومبادئ العدالة</p> <p>إذا لم يوجد حكم تشريعي يمكن تطبيقه فللقاضي أن يسترشد بالسوابق القضائية وبمقتضيات الإنصاف والاستقامة التجارية .</p> <p>مادة (4) تطبيق العرف</p> <p>على القاضي عند تحديد آثار النشاط الاقتصادي أن يطبق العرف المستقر إلا إذا تبين أن المتعاقدين قصدوا مخالفة أحكام العرف أو كان العرف متعارضاً مع النصوص التشريعية التجارية الأمر .</p> <p>ويعد العرف الخاص والعرف المحلي مرجحين على العرف العام .</p> <p>الباب الثاني في الأفراد مادة (5) تعريف مزاولة النشاط التجاري</p> <p>يعتبر مزاولة للنشاط التجاري كل من باشر أعمالاً تجارية ، واتخذها حرفة معتادة له ، وتطبق بشأن النشاط الأسري الأحكام المنظمة لشركة المحاصة .</p> <p>مادة (6) حالة استثنائية</p> <p>يعد مزاولة للنشاط التجاري ، وإن لم يتخذ التجارة نشاطاً معتاداً له ، كل من أعلن في الصحف أو النشرات أو أية واسطة أخرى عن المحل الذي أسسه ، وفتحته للاشتغال بالمعاملات التجارية .</p> <p>مادة (7) السن القانونية لمزاولة النشاط التجاري</p> <p>يجوز لمن بلغت سنة ثمان عشرة سنة كاملة أن يقوم بمزاولة النشاط التجاري ما لم يتطلب تشريع آخر أهلية أعلى .</p> <p>مادة (8) ممارسة النشاط التجاري لحساب الغير</p> <p>1. يجوز للولي أو الوصي أو القيم أن يمارس التجارة لحساب القاصرين ومن في حكمهم ، وذلك بإذن من المحكمة الابتدائية التي يقع النشاط التجاري في نطاق اختصاصها .</p> <p>2. وفي هذه الحالة يجوز شهر إفلاس القاصر أو من في حكمه دون أن تطبق في شأنهم التبعات الجنائية لشهر الإفلاس .</p>	<p><b>Book One</b></p> <p><b>In Practicing Economic Activities</b></p> <p><b>Chapter One</b></p> <p><b>General Provisions</b></p> <p><b>Article 1</b></p> <p><b>Scope of Implementation of this Law</b></p> <p>This Law includes the provisions related to economic activities to be performed by any individual whatsoever his legal capacity. It includes also the provisions organizing tools of practicing economic activity represented in the individual activity, family activity, partnerships, companies and other legal provisions relevant to the economic activity.</p> <p><b>Article 2</b></p> <p><b>Application of Civil Law</b></p> <p>The provisions of the Civil Law shall be applied to the economic activities which are not provided for in this Law, provided that such provisions shall be applied in as much as their correspondence with General Principles in this Law.</p> <p><b>Article 3</b></p> <p><b>Application of Precedents and Principles of Justice</b></p> <p>If there is no applicable legislative provisions, the judge shall have the right to be guided by the precedents, equity requirements and commercial integrity.</p> <p><b>Article 4</b></p> <p><b>Application of Tradition</b></p> <p>On determination of the economic activity effects, the judge should apply the established tradition except if it is appeared that the contracting parties have intended to contradict the tradition provisions or the tradition was in conflict with ordered commercial legislative terms.</p> <p>The special and local traditions are overweighing the general tradition.</p> <p><b>Chapter Two</b></p> <p><b>On Individuals</b></p> <p><b>Article 5</b></p> <p><b>Definition for Practicing Commercial Activity</b></p> <p>Anyone who starts commercial works and takes thereof as his usual profession shall be considered as a commercial activity practitioner. As regards the family activity, the provisions of organizing a particular partnership shall be applied.</p> <p><b>Article 6</b></p> <p><b>An Exceptional Case</b></p> <p>Anyone who declared in the press or circulars or any other means of the shop which he established and opened for engaging in Commercial transactions shall be considered as a probationer of commercial activity.</p> <p><b>Article 7</b></p> <p><b>Legal Age for Practicing Commercial Activity</b></p> <p>Anyone who attained activity in full eighteen years of age may practice commercial activity unless another legislation requires higher qualification.</p> <p><b>Article 8</b></p> <p><b>Practicing Commercial Activity to Others Account</b></p> <ol style="list-style-type: none"><li>1- The guardian or the custodian or the curator may practice commerce to the minors or alike account under a permission of the court of the First Instance which the commercial activity falls under its jurisdiction.</li><li>2- In this case, the bankruptcy of the minor or alike may be declared, without applying against them the criminal consequences of the bankruptcy declaration.</li></ol>
--	--

## Text 37

### Article 9

#### Practicing of Commercial Activity by Women

- 1- The women's qualification for practicing commercial activity shall be organized by their personal status law.
- 2- The foreign wife who engages in practicing economic activity in Jamahiriya is supposed to practice thereof under permission of the husband. If the personal status law of the couple allows the husband to protest against engagement of her wife in commerce or withdrawal of his previous permission, this must be written down in the Commercial Register and published as per legal methods. Protestation or withdrawal of the permission shall not result in any effect except from the date of its publication protestation or withdrawal of the permission shall not affect the rights gained by the others.
- 3- The merchant foreign wife is supposed to have been married according to the system of separation of the funds unless she has been declared the financial agreement in her marriage contract.

Declaration shall be through entry in the Commercial Register which the commercial shop falls under its jurisdiction and shall be published according to legal methods.

In case of lack of the declaration shown in the previous paragraph, a third party may prove that the marriage was effected according to a financial system more appropriate to his favour.

The judgment issued outside Jamahiriya on separation of the couple funds shall not be a contest against the third party, except from the date of its registration in the Commercial Register Office. The commercial shop, in which the couple or one of them starts his trade, falls under its jurisdiction and shall be published as per legal method.

### Article 10

#### Junior Merchants

Individuals who engage in small size commerce of small expenditures, so that they often depend on their physical endeavours to gain little profits to ensure their living more than depending on their cash capital as a traveling salesman or day salesman shall neither be subject to duties of commercial books nor to rules of bankruptcy declaration nor to bankruptcy and protective reconciliation provided for in this Law.

### Article 11

#### Public Establishments and Bodies

The estate, public administrative units, committees, clubs and legal personality societies which do not aim at gaining, even if they carried out commercial transactions, but their mentioned transactions shall be subject to provisions of this Law.

#### مادة (9)

##### مزاولة النساء للنشاط التجاري

1. ينظم أهلية النساء لمزاولة النشاط التجاري قانون أحوالهن الشخصية .
  2. يفترض في الزوجة الأجنبية التي تحترف مزاولة النشاط الاقتصادي في الجماهيرية أنها تمارسه بإذن زوجها ، فإذا كان قانون الأحوال الشخصية للزوجين يجيز للزوج الاعتراض على احتراف زوجته التجارة ، أو سحب إذنه السابق ، وجب قيد ذلك في السجل التجاري ، ونشره حسب الطرق القانونية .
  3. ولا ينتج الاعتراض أو سحب الإذن أي أثر إلا من تاريخ نشره .
  4. ولا يؤثر الاعتراض أو سحب الإذن في الحقوق التي اكتسبها الغير .
  5. يفترض في الزوجة الأجنبية التاجرة أنها تزوجت طبقاً لنظام انفصال الأموال إلا إذا كانت قد قامت بشهر المشاركة المالية بعقد زواجها .
- ويكون الشهر بالقيّد في السجل التجاري الواقع في دائرته المحل التجاري ونشره حسب الطرق القانونية .

ويجوز للغير في حالة عدم الشهر المبين في الفقرة السابقة أن يثبت أن الزواج قد تم وفقاً لنظام مالي أكثر ملاءمة لمصلحته .

ولا يحتج على الغير بالحكم الصادر خارج الجماهيرية القاضي بانفصال أموال الزوجين إلا من تاريخ قيده بمكتب السجل التجاري الواقع في دائرته المحل التجاري الذي يباشر فيه الزوجان أو أحدهما تجارته ، ونشره حسب الطرق القانونية .

#### مادة (10)

##### صغار التجار

الأفراد الذين يزاولون تجارة صغيرة ذات نفقات زهيدة بحيث يعتمدون في الغالب على مساعيهم البدنية للحصول على أرباح قليلة لتأمين معيشتهم أكثر من استنادهم إلى رأس مالهم النقدي كالبائع الطواف ، أو البائع بالمباومة لا يخضعون للواجبات الخاصة بالدفاتر التجارية ، ولا لقواعد الشهر ولا لأحكام الإفلاس والصلح الوافي المنصوص عليها في هذا القانون .

#### مادة (11)

##### المؤسسات والهيئات العامة

لا يعد من مزاولي النشاط الاقتصادي الدولة ، والوحدات الإدارية العامة ، واللجان والنوادي ، والجمعيات ذات الشخصية الاعتبارية التي ليس هدفها الكسب ، وإن قامت بمعاملات تجارية ، إلا أن معاملاتها المذكورة تكون خاضعة لأحكام هذا القانون .

## Text 38

<p>الباب الثالث الشركات الفصل الأول : أحكام مشتركة الفرع الأول - أحكام عامة مادة (12) أنواع الشركات</p> <p>يتم تأسيس الشركات التي غرضها القيام بنشاط تجاري وفقاً لأحد أنواع الشركات التجارية المنصوص عليها في المادة (13) من هذا القانون ، وتتم ممارسة الأنشطة المدنية بصفة جماعية وفقاً للشركات المدنية المنصوص عليها في الفصل الثالث من هذا الباب .</p> <p>مادة (13) الشركات التجارية</p> <p>تعتبر شركات التضامن والتوصية البسيطة و التوصية بالأسهم والمساهمة والشركات ذات المسؤولية المحدودة تجارية مهما كانت طبيعة نشاطها . أما أنه بالنسبة لشركة المحاصة فتكون تجارية أو مدنية بحسب طبيعة نشاطها .</p> <p>مادة (14) عقد الشركة</p> <p>يجب - في غير شركات المحاصة - أن يكون عقد الشركة ونظامها الأساسي في شكل محررات رسمية ، ويجب أن يتضمن العقد والنظام الأساسي للشركة شكلها القانوني ، واسمها ، و مدتها ، و مقرها ، ومركزها الرئيسي ، ورأس المال المدفوع منه في الحالات التي يتطلبها القانون ، وأغراضها بمراعاة وحدة الغرض والتخصص بالكيفية أو الصورة التي ينظمها قرار يصدر عن اللجنة الشعبية العامة .</p> <p>وفي جميع الأحوال يراعى أن يتناسب عمل الشركة مع رأس مالها وفقاً لتصنيف الشركات الذي يصدر به قرار من اللجنة الشعبية العامة .</p> <p>مادة (15) رأس المال</p> <p>ما لم ينص القانون على خلاف ذلك ، يتولى مؤسسو الشركات تحديد رأس المال الذي يرويه مناسباً لتحقيق غرض الشركة .</p> <p>مادة (16) بيانات مستندات الشركة</p> <p>يجب أن يُذكر في مستندات الشركة ومراسلاتها مركز الشركة الرئيسي ، ومكتب السجل التجاري المُقيّدة به ، ورقم القيد . ويجب بالنسبة للشركات المساهمة وشركات التوصية بالأسهم والشركات ذات المسؤولية المحدودة أن يُذكر زيادة على ما تقدّم رأس المال المُكتتب فيه والمدفوع منه فعلاً .</p>	<p><b>Chapter Three</b></p> <p><b>Companies</b></p> <p><b>Section One</b></p> <p><b>Common Provisions</b></p> <p><b>Branch One</b></p> <p><b>General Provisions</b></p> <p><b>Article 12</b></p> <p><b>Companies Kinds</b></p> <p>Companies which their purposes are performance of commercial activity according to one of the commercial companies kinds provided for in Article (13) of this Law shall be established. The Civil activities shall be practiced in a group according to civil companies provided for in Chapter Three of this Section.</p> <p><b>Article 13</b></p> <p><b>Commercial Companies</b></p> <p>The Joint-Stock Companies, limited companies, companies limited by shares, joint-stock companies and limited liability companies are considered as commercial companies whatever the nature of their activity provided that the partnership companies are considered as commercial or civil by the nature of their activity.</p> <p><b>Article 14</b></p> <p><b>Company's Memorandum of Association</b></p> <p>In other than partnership companies, the memorandum and articles of association of the company should be in a form of official entries. The memorandum and articles of association of the company should contain its legal form, name duration, office, headquarters, paid capital in cases required by law and its purposes, in consideration of the unity of purpose and specialization in a manner of form to be organized under a resolution to be issued by the General People's Committee.</p> <p>In all the cases, the company activity shall be appropriate to its capital according to classification of the companies to be issued under a resolution of the General People's Committee.</p> <p><b>Article 15</b></p> <p><b>Capital</b></p> <p>Unless the law provides otherwise, the founders of the companies shall fix the capital which they deem appropriate to achieve the company purpose.</p> <p><b>Article 16</b></p> <p><b>Data of Company Document</b></p> <p>The company head office, the Commercial Register Office in which it is registered, registration number must be laid-down in documents and correspondence of the company. As regards Joint-Stock Companies, companies limited by shares and limited liability companies there should be laid-down, in addition to the above the subscribed capital and the actually paid thereof.</p>
---	--

## Text 39

<p><b>مادة (17)</b> <b>الخضوع للقانون الليبي</b> تخضع للقانون الليبي الشركات التي يكون مركزها الرئيسي في الجماهيرية ، ويُعتبر المركز الرئيسي في الجماهيرية إذا كان يوجد بها النشاط الرئيسي ، أو الإدارة الفعليّة لها . كما تخضع الشركات التي تؤسس داخل أراضي الدولة لأحكام القوانين الليبية ولو كان غرضها القيام بنشاط في الخارج .</p> <p><b>مادة (18)</b> <b>مراجع الحسابات الخارجي</b> يجب على كلّ شركة منظمة بأحكام هذا القانون أن تُعيّن مراجع حسابات خارجياً أو أكثر حسب الأحوال ، إذا تجاوز رأس مالها المقدّر الذي يحدده قرار من الأمين المختص ، كما يجب أن يكون مراجع الحسابات الخارجي من الأشخاص المرخص لهم بممارسة هذه المهنة ، ويعتبر التقرير الصادر عن مراجع الحسابات الخارجي وكذلك الميزانية والحسابات الختامية المراجعة من قبله صحيحاً وحجة أمام الغير إلى أن يثبت العكس .</p>	
---	--

<p><b>مادة (19)</b> <b>حظر فصل الشريك</b> لا يجوز طرد الشريك من الشركة إلا في الحالات التي يُبيح فيها القانون ذلك ، أو في الحالات المنصوص عليها في العقد ، أو النظام الأساسي، كما لا يجوز تشديد التزام الشريك إلا بموافقة .</p> <p><b>مادة (20)</b> <b>أخطاء الإدارة</b> إذا اتضح أن عدم كفاية أصول وأموال الشركة لسداد ديونها راجع إلى أخطاء جسيمة في الإدارة ، حُمل المدير أو المديرون هذه الديون كلياً أو جزئياً بحسب نسبة مساهمة أخطائهم في حدوثها .</p> <p><b>مادة (21)</b> <b>تقديم دعوى المسؤولية</b> تتقدم دعوى المسؤولية المدنية في مواجهة الشريك والتي تستند على صفة كونه شريكاً في الشركة بمضي خمس سنوات من تاريخ شطب الشركة من السجل التجاري ، أو من تاريخ قيد خروجه من الشركة ، وتتقدم دعوى المسؤولية في مواجهة المديرين بمضي خمس سنوات من تاريخ شطب الشركة من السجل التجاري أو من تاريخ قيد انتهاء مهمتهم في السجل التجاري المختص .</p> <p><b>مادة (22)</b> <b>الشركة العامة والمختلطة</b> تسري أحكام هذا القانون على الشركات التي تؤسسها الدولة ، أو تلك التي تؤول ملكية أسهمها إليها ، أو إلى غيرها من الأشخاص الاعتبارية العامة كلياً ، أو جزئياً وذلك فيما لم يرد بشأنه نص خاص في القوانين المنظمة لها .</p> <p><b>مادة (23)</b> <b>نماذج العقود والأنظمة الأساسية</b> يجوز للأمين المختص أن يصدر قراراً بالنماذج الاسترشادية لعقود التأسيس ، والأنظمة الأساسية للشركات والتشريكات المنظمة بهذا القانون .</p>	
---	--

## Article 17

### Submission to Libyan Law

The Companies having their head offices in Jamahiriya shall be subject to the Libyan Law. The head office is considered to be in Jamahiriya if its main activity or actual management exists therein.

The companies to be established within the territory of the country shall be subject to provision of the Libyan Laws even if their purpose is performance of the activity abroad.

## Article 18

### External Auditor

Any company organized under provisions of this law should nominate an external auditor or more, as per the cases, if it exceeded its estimated capital to be fixed by a resolution of the concerned secretary. The external auditor also must be amongst the persons authorized to practice such profession. The report to be issued by the external auditor as well as the balance sheet and the final accounts audited by him shall be considered correct and a pretext before others unless the contrary is confirmed.

## Article 19

### Prohibition of Partner Dismissal

The partner may not be dismissed from the company unless in cases allowable by the law or in cases provided for in the memorandum or the

Articles of Association. The partner obligation also may not be emphasized unless with him consent.

## Article 20

### Management Errors

If it is appeared that the insufficiency of the company's assets and funds to pay its debts is due to gross errors in management. The manager or the manager's shall bear these debts wholly or partly as per percentage of contribution of their errors to occurrence of the same.

## Article 21

### Prescription of the Case of Responsibility

The case of civil responsibility against the partner, which depends on his capacity as a partner in the company shall be prescribed after lapse of five years from the date of striking out of the company from Commercial Register or from the date of registration of getting out of the company. The case of responsibility against the managers shall prescribe after five years from the date of striking out of the company from Commercial Register or from the date of registration of expiry of their function in the concerned Commercial Register.

## Article 22

### Public and Mixed Company

The provisions of this law shall apply to the companies to be established by the State or those which the ownership of their shares shall pass wholly or partly totally to it or to other public legal personalities as regards what is not provided for in laws organizing thereof in a particular manner.

## Article 23

### Forms of Memorandums and Articles of Association

The concerned secretary may issue a resolution on guided forms of memorandums and articles of associations of companies and partnerships.



## Text 40

الفرع الثاني  
تسجيل وإشهار الشركات  
مادة (24)  
القيد في السجل التجاري  
يجب على جميع الشركات المنظمة بهذا القانون مهما كانت طبيعة نشاطها القيد في السجل التجاري المختص ، باستثناء شركة المحاصة .

ويتم القيد بإيداع نسخة من العقد ، والنظام الأساسي ، و المستندات الأخرى التي يتطلبها السجل التجاري .

مادة (25)  
الشخصية المعنوية  
تتمتع الشركة بالشخصية القانونية اعتباراً من تاريخ قيدها في السجل التجاري ، وتنتهي بالتطيق منه .  
وللشركة بعد القيد في السجل التجاري أن تتخذ قراراً بتحمل آثار العقود والتصرفات القانونية التي قام بها المؤسسون لضرورات مرحلة التأسيس ، بحيث تكون الحقوق والالتزامات في ذمة الشركة بشكل مباشر .

مادة (26)  
إشهار الشركة  
يجب على الشركة بعد إتمام إجراءات القيد في السجل التجاري أن تقوم بالإعلان عن إنشائها بالطرق المحددة قانوناً ، وذلك خلال عشرة أيام من تاريخ القيد في السجل التجاري .

مادة (27)  
وجوب قيد التغييرات  
تخضع لإجراءات القيد في السجل التجاري ، وكذلك لإجراءات الإشهار المنصوص عليها في المادة السابقة خلال عشرة أيام من تاريخ صدور القرار المتعلق بالأمور التالية :  
1. تعديل النظام الأساسي .  
2. تعيين المديرين ، وتحديد مهامهم وإنهائهم .  
3. حل الشركة وتصفيتها .  
4. الاندماج ، أو الانقسام ، أو التغيير في الشكل القانوني .  
5. الإعلان عن ختم الحسابات بعد حل الشركة ، أو تصفيتها ، أو اندماجها ، أو انقسامها .  
ويتولى الممثل القانوني للشركة وعلى مسؤوليته ، القيام بإجراءات القيد والإشهار المقررة قانوناً .

### Branch Two

### Registration and Declaration of Companies

#### Article 24

#### Registration in Commercial Register

All the companies organized under this law, whatever the nature of their activity shall register in the concerned Commercial Register with exception of a particular partnership.

Registration shall be done by deposit of a copy of the memorandum and articles of association as well as other documents required by the Commercial Register.

#### Article 25

#### Body Corporate

The company shall get the benefit of the legal personality with effect from the date of its registration in the Commercial Register and shall end on striking out therefrom.

After registration in the Commercial Register, the company shall have the right to take a resolution on bearing the effects of the contracts and legal dispositions carried out by the founders for necessities of the foundation phase, so that the rights and obligations shall be directly under company protection.

#### Article 26

#### Company's Declaration

After completion of formalities of registration in the Commercial Register, the company must declare its establishment in legally defined manner, within ten days from the date of registration in the Commercial Register.

#### Article 27

#### Necessity of Changes Registration

The resolutions related to the following matters shall be subject to formalities of registration in the Commercial Register as well as formalities of declaration provided for in the previous articles within ten days from the date of their issuance:

- 1- Amendment of the articles association.
- 2- Nomination of manager, definition and termination of their functions.
- 3- Dissolution and liquidation of the company.
- 4- Merger or division or change of the legal form.
- 5- Declaration of finalization of accounts after dissolution or liquidation or merger or division of the company. The legal representative of the company shall assume, at his risk, performance of formalities of legally prescribed registration and declaration.

## Text 41

**مادة (28)**  
**بطلان الإجراءات**  
يترتب على عدم مراعاة قواعد القيد والإشهار المشار إليها في المادتين السابقتين بطلان إجراءات القيد .

ومع ذلك لا يجوز للممثلين القانونيين للشركة ولا للشركاء المتضامنين أن يحتجوا بهذا البطلان في مواجهة الغير .

**مادة (29)**  
**الشركة الفعيلة**  
لا يؤثر في صحة ما تم من أعمال وتصرفات الشركة ، الحكم ببطلانها الصادر بعد القيد في السجل التجاري ، ولا يُعفى الشركاء من دفع حصصهم بالكامل إلا بعد دفع ما على الشركة من ديون .  
ولا يجوز الحكم بالبطلان إذا زال سببه بإجراء تم قيده في السجل التجاري .

### **الفرع الثالث** **الحل والتصفية**

**مادة (30)**  
**أنواع الحل**  
يكون حل الشركة إرادياً أو قضائياً وتتحل الشركة إرادياً بقرار يتخذه الشركاء وفق الشروط والبنود المنصوص عليها في عقد التأسيس أو النظام الأساسي وتتحل الشركة قضائياً بحكم صادر من المحكمة المختصة في الأحوال الأخرى التي لا ترجع لإرادة الشركاء ، كما يجوز لكل شريك أن يلجأ إلى المحكمة المختصة للمطالبة بحل الشركة إذا أخل الشركاء الآخرون بواجباتهم أو بسبب التنزاع المستمر بينهم أو لأسباب جتية لا يد للشركاء فيها .

**مادة (31)**  
**نقصان أصول الشركة**  
إذا نقصت قيمة أصول الشركة عن أقل من نصف رأس مالها نتيجة للخسائر المثبتة في قوائمها المالية ، وجب على المدير أو المديرين أن يدعوا الشركاء للاجتماع بغرض حل الشركة ، أو مواصلة نشاطها بعد إعادة رأس المال إلى ما يزيد على النصف على الأقل .

**مادة (32)**  
**انتهاء مدة الشركة**  
تتحل الشركة إذا انتهت المدة المحددة لها ، إلا إذا قام الشركاء بتمديد أجل الشركة حسب بنود العقد أو النظام الأساسي قبل انتهاء تلك المدة ، ما لم ينص القانون على خلاف ذلك .

**مادة (33)**  
**تحقيق الغرض أو استحالة تحقيقه**  
تعتبر الشركة منحلة إذا حققت غرضها ، أو أصبح تحقيق غرضها مستحيلاً .

**مادة (34)**  
**أيلولة الأسهم أو الحصص إلى شخص واحد**  
في حالة أيلولة كل الأسهم أو الحصص إلى شخص واحد وجب على من آلت إليه ملكية الأسهم أو الحصص أن يبادر ببيع ما يتجاوز منها الحدود المنصوص عليها في هذا القانون خلال مدة لا تتجاوز سنة واحدة ، وإلا اعتبرت الشركة منحلة بقوة القانون.  
ولا تنطبق أحكام هذه المادة في حالة أيلولة الأسهم إلى شركة قابضة .

**مادة (35)**  
**الشركة التي لم تمارس نشاطها**  
إذا لم تبدأ الشركة ممارسة نشاطها أو توقفت عنه لمدة ستة أشهر متتالية ، وجب عليها إخطار مكتب السجل التجاري المختص بذلك ، وإذا لم تقوم الشركة بممارسة النشاط أو الاستمرار فيه خلال ستة أشهر تالية للإخطار ، يطلب مكتب السجل التجاري المختص من المحكمة الابتدائية المختصة إصدار قرار بحل وتصفية الشركة.

## **Article 28** **Cancellation of Formalities**

Non-observation of rules of registration and declaration referred to two previous articles shall result in cancellation of registration formalities.

Nevertheless, nor the legal representative of the company, neither the joining partners may not protest by this cancellation against the others.

## **Article 29** **Actual Company**

The cancellation judgment issued after registration in the Commercial Register shall neither affect the correctness of the executed acts and disposition of the company, nor release the partners from payment of their shares in full except after payment of the company debts.

Judgment on cancellation shall not be allowable if its cause is removed by an action registered in the Commercial Register.

## **Branch Three** **Dissolution and Liquidation**

### **Article 30** **Types of Dissolution**

The company dissolution shall be voluntarily or judicially. The company shall be dissolved voluntarily by a resolution to be taken by the partners according to terms and conditions provided for in the memorandum and articles of association and shall be dissolved judicially by a judgment to be issued by the

competent court in other cases not attributable to partners will. Each partner may resort also to the competent court to claim for dissolution of the company if the other partners breached their duties or due to continuous dispute between them or for serious reasons in which the partners have no role.

### **Article 31** **Decrease in Company Assets**

If the value of the company assets is decreased by less than half of its capital due to the losses confirmed in its financial statements, the manager or the manager must convene partners meeting for dissolving the company or continuing its activity after reinstating the capital to at least more than half.

### **Article 32** **Expiry of Company Duration**

The company shall be dissolved on expiry of its fixed duration unless the partners extended thereof as per terms of the memorandum or articles of association prior to expiry of that duration, unless the law states otherwise.

### **Article 33** **Realization of the Purpose or Impossibility of its Realization**

The Company shall be considered as dissolved whenever realized its purpose or whenever realization of the same became impossible.

### **Article 34** **Transfer of Shares or Portions to One Person**

If all the shares or portions are transferred to one person, then the person to whom the ownership of shares and portions is passed must take the initiative to sell what is exceeding the limits provided for in this Law within a period not exceeding one year, otherwise the company shall be considered as dissolved by operation of the Law.

Provisions of this article shall not apply in case the shares are transferred to a holding company.

### **Article 35** **The Company which did not Practice its Activity**

If the company did not start exercising of its activities or suspended thereof for six successive months, it should notify the concerned Commercial Register Office thereof. If it did not exercise the activity or continued thereof during the six months following the notice, the concerned Commercial Register Office shall ask the competent Court of the First Instance to issue a resolution of dissolution and liquidation of the Company.

## Text 42

### مادة (36)

#### توافر إحدى حالات حل الشركة

تكون الشركة في حالة تصفية بمجرد توفر إحدى الحالات التي يترتب عليها حلها وعلى المديرين اعتبار أنفسهم في وضع المُصَفِّين بحيث تقتصر مهامهم على الأمور العاجلة ، ولا يجوز لهم مباشرة أعمال جديدة وإلا أصبحوا مسؤولين عنها بوجه التضامن والتكافل ، وتنتهي مهامهم نهائياً بمجرد تعيين المُصَفِّ والمديرون مسؤولين عن حفظ موجودات الشركة إلى أن يتم تسليمها إلى المُصَفِّ ، ويجب أن يكون اسم الشركة متبوعاً بعبارة " شركة تحت التصفية " ، وتستمر شخصيتها القانونية بالقدر اللازم للتصفية ، وذلك إلى حين شطبها من السجل التجاري ، ولا يجوز الاحتجاج في مواجهة الغير بأن الشركة تحت التصفية ، إلا بعد قيد هذه الواقعة في السجل التجاري ونشرها حسب الطرق المقررة قانوناً .

### مادة (37)

#### القواعد المتبعة في التصفية

تتم تصفية الشركة حسب أحكام النظام الأساسي ، وبما لا يتعارض مع الأحكام الواردة في هذا القانون ، وعند خلو نظامها الأساسي من حكم خاص أو عند الحكم ببطلانه ، تُتبع الأحكام المتبعة في التصفية الواردة في هذا القانون .

### مادة (38)

#### تعيين المُصَفِّين

يتولى الشركاء وفقاً لشكل الشركة القانوني تعيين مُصَفِّ أو مُصَفِّين حسب الأحوال ، وبما لا يتعارض مع الشروط الواردة بالعدد أو النظام الأساسي ، ويجوز أن يكون المصفي من الشركاء أو من الغير ، وإذا لم يتمكن الشركاء من تعيين المُصَفِّ يقوم رئيس المحكمة الابتدائية المختصة بتعيينه بناءً على طلب كل ذي مصلحة ، وإذا تم حل الشركة بحكم قضائي تتولى المحكمة تعيين المُصَفِّ أو المُصَفِّين .

ويجب على المُصَفِّين قيد قرار تعيينهم في السجل التجاري المختص خلال عشرة أيام من تاريخ علمهم به ، وتتولى الجهة التي عيّنت المُصَفِّين تحديد أتعابهم ، واتخاذ القرار القاضي بعزلهم أو استبدالهم .

### مادة (39)

#### تعدد المُصَفِّين

إذا تعدد المُصَفِّون ، فلا يجوز لأحدهم مباشرة عمله بمفرده إلا إذا كان مأذوناً له بذلك صراحة ، أو كان العمل استعجالياً وتتطلبه المحافظة على حقوق الشركة .

### مادة (40)

#### واجبات أولية على المُصَفِّين

لا يجوز للمُصَفِّ أو المُصَفِّين مباشرة مهامهم ، إلا بعد قيد قرار تعيينهم في السجل التجاري مصحوباً بنماذج لتوقيعاتهم الخطية ، ويجب كذلك نشر قرار تعيينهم بالطرق المقررة قانوناً خلال عشرة أيام من تاريخ قيد القرار في السجل التجاري ، وعلى المُصَفِّين بمجرد مباشرته لمهامه أن يقوم مع المدير أو المديرين بجرد أصول وخصوم الشركة ، وأن يتم التوقيع على محضر الجرد من قبلهم جميعاً ، وأن يوجه بعد ذلك إعلاناً عاماً إلى دائني الشركة يُنشر في صحيفتين يوميتين وطنيتين لإشعار الدائنين بلزوم تقديم مُطالباتهم تجاه الشركة .

### مادة (41)

#### بعض المحظورات على المُصَفِّ

يجوز للمُصَفِّ اللجوء إلى التحكيم إلا إذا منع صراحة من ذلك ، ولا يجوز للمُصَفِّ إعطاء ضمانات ، أو إجراء الصلح إلا بعد موافقة الشركاء أو المحكمة المختصة بحسب الأحوال .

### Article 36

#### Availability of One of the Cases of Company Dissolution

The company shall be in state of liquidation once one of the cases from which the Company dissolution follows is available. The directors should consider themselves on position of liquidators so that their functions shall be restricted to urgent matters. They shall not take up any new jobs, otherwise they shall be responsible therefore jointly and severally. Their assignment shall be finally ended once the liquidator is nominated.

The directors shall be responsible for keeping company's assets until delivery to the liquidator. The company name must be followed by the expression of (company under liquidation). Its legal personality shall continue inasmuch as necessary for liquidation until striking it off the Commercial Register. It may not be allowed to protest against a third party that the company is under liquidation, except after registration of the fact in the Commercial Register and publication thereof as per legally established methods.

### Article 37

#### Rules Adopted in Liquidation

The liquidation of the company shall be carried out as per provisions of the articles of association inasmuch as not contradicting the provisions laid-down in this Law. If its articles of association is devoid of a special provision or when judged void and null, the provision applied in liquidation set out in this Law shall be followed.

### Article 38

#### Nomination of Liquidators

The partner shall assume, according to the legal form of the company, nomination of a liquidator or liquidators as per the cases, inasmuch as not contradicting the conditions laid in the contract or articles of association. The liquidator may be amongst the partners or a third party. If the partners are not able to nominate a liquidator, the President of the competent Court of First Instance shall nominate him based on a request from anyone who has

interest therein. If the company is dissolved by a judicial judgment, the Court shall assume nomination of the liquidator or liquidators.

Liquidators must register the decision of their nomination in the concerned Commercial Register within ten days from the date of being informed thereof. The authority which nominated the liquidators shall fix their fees and take the resolution of their removal or replacement.

### Article 39

#### Multiplicity of Liquidators

If the liquidators are multiple, it shall not be allowed to one of them to start his job alone unless he is expressly permitted to do so or if the work is pressing and required by maintenance of company's right.

### Article 40

#### Primary Duties of Liquidators

The liquidator or liquidators may not start their functions except after registration of their nomination resolution in the Commercial Register accompanied by their written signatures specimens. The resolution of their nomination must be published also in the legally established manners during ten days from the date of registration of the resolution in the Commercial Register. Once starting his task, the liquidator along with the manager or managers shall take inventory of the company assets and liabilities. The minutes of the inventory shall be signed by all of them, and afterwards a notice shall be addressed to the company creditors and shall be published in two daily national newspapers to serve notice to the creditors that they should submit their claims against the company.

### Article 41

#### Some Prohibition on the Liquidator

The liquidator may resort to arbitration if expressly prevented therefrom. The liquidator may not give guarantees or conduct a reconciliation unless after approval of the partners or the competent Court as per the cases.



## Text 43

<p><b>مادة (42)</b> <b>اجتماع الشركاء في بداية التصفية</b> يجب على المُصفي أن يدعو الشركاء إلى الاجتماع خلال ثلاثة أشهر تالية لمباشرة مهامه ليعرض عليهم تقريراً حول الوضع المالي للشركة ، وإجراءات التصفية التي ينوي اتباعها ، وإذا لم يقم المُصفي بذلك جاز لكل ذي مصلحة أن يلجأ إلى رئيس المحكمة الابتدائية لاستصدار أمر بعقد الاجتماع .</p>	
<p><b>مادة (43)</b> <b>تمثيل الشركة تحت التصفية</b> يُعتبر المُصفي الممثل القانوني للشركة تحت التصفية ، وللمُصفي الاستمرار في تنفيذ العقود الجارية بحسب ما تتطلبه ضرورات التصفية ، ويجوز له بيع أموال الشركة سواء أكانت عقارية أم منقولة إما بالمزاد ، أو بالممارسة ما لم يُنص في أمر تعيينه على تقييد هذه السلطة ، ولا يُحتج بهذا التقييد قبل الغير ، ويبقى المُصفي مسؤولاً أمام الشركة والشركاء والغير عن الأخطاء التي يرتكبها أثناء تأدية مهامه بنفس الكيفية التي يُساعِل بها المديرون ، وتتقدم دعوى المسؤولية بمُضي خمس سنوات اعتباراً من تاريخ شطب الشركة من السجل التجاري .</p>	
<p><b>مادة (44)</b> <b>مدة التصفية</b> 1. يجب على المُصفي أن ينهي أعمال التصفية خلال سنة من تاريخ مباشرته لمهامه ، وإذا لم تكن هذه المدة كافية يجب على المُصفي أن يُقدم تقريراً يبين فيه أسباب التأخير ، والمدة اللازمة لإنهاء أعمال التصفية خلالها . 2. يجوز أن تُمدد المدة بالنسبة لنفس المُصفي أو المُصفين لمدة أو لمدد لا تتجاوز سنة بمقتضى قرار من الشركاء ، أو من المحكمة حسب الأحوال .</p>	
<p><b>مادة (45)</b> <b>استمرار مهام بعض هيئات الشركة</b> تستمر مهام واختصاصات الجمعية العمومية للشركة وهيئة المراقبة طوال مدة التصفية بالقدر الذي لا يتعارض مع إجراءاتها .</p>	
<p><b>مادة (46)</b> <b>ديون الشركة تحت التصفية</b> تُعتبر ديون الشركة جميعها حالة الأداء بمجرد حل الشركة في السجل التجاري وتوقف اعتباراً من ذلك التاريخ إجراءات تنفيذ الأحكام الصادرة ضد الشركة وتعتبر المبالغ المحكوم بها ديوناً على الشركة ، ويتولى المُصفي سدادها بحسب ما تتمتع به من أولوية وضمانات ، ولا يترتب على حل الشركة إنهاء عقود إيجار العقارات التي تُمارس فيها نشاطها .</p>	
<p><b>مادة (47)</b> <b>سداد الديون</b> يقوم المُصفي بتسديد الديون للدائنين حسب مراتبها ، وإذا تساوى الدائنون في مرتبة واحدة ، وكان ناتج التصفية غير كافٍ لتسديد جميع حقوقهم بالكامل ، يتم التوزيع عليهم حسب نسبة تلك الحقوق ، وعلى المُصفي تجنب المبالغ اللازمة لسداد حقوق من تأخر من الدائنين متى كانت حقوقهم ثابتة ومحددة المقدار . وإذا تبين للمُصفي أن أموال الشركة غير كافية لسداد ديونها الحالية ، وجب عليه دعوة الشركاء لإتخاذ القرارات اللازمة ، بما في ذلك الدخول في صلح واق مع الدائنين أو اللجوء إلى المحكمة المختصة لشهر إفلاسها .</p>	

### Article 42

#### Partners Meeting in the Beginning of Liquidation

The liquidator must convene the partners meeting within the three months following commencement of his assignments to present to them a report on the company's financial position and liquidation measures which he intends to follow. If the liquidator did not do so, anyone who has interest may resort

to the President of the Court of First instance to issue an order for holding the meeting.

### Article 43

#### Representation of the Company under Liquidation

The liquidator is considered as a legal representative of the company under liquidation. He shall continue execution of the current contracts as required by the liquidation necessities. He may sell the Company properties, either real estate or movable by auction or bidding unless the order of his nomination provided for restriction of this power and this restriction shall not be a pretext against the others. The liquidator shall remain responsible before the company, partners and third parties for mistakes to be committed by him during performance of his assignments at the same manner as managers. The case of responsibility shall be prescribed after lapse of five years with effect from the date of the company's striking out from the Commercial Register.

### Article 44

#### Liquidation Duration

- 1- The liquidator must complete the liquidation tasks during one year from the date of commencement of his assignment. If this period is not sufficient, the liquidator must submit a report showing the delay reasons and the period necessary for completion the liquidation tasks.
- 2- The period for the same liquidator or liquidators may be extended for a period or periods not exceeding one year by the virtue of a resolution of partners or the Court as per the cases.

### Article 45

#### Continuity of Assignment of Some Bodies of the Company

The assignments and powers of the Company's general assembly and the control body during the liquidation period inasmuch as not contradicting its procedures.

### Article 46

#### Debts of the Company under Liquidation

All he debts of the Company when paid as registration of the company dissolution in the commercial register and from that date, the procedures of execution of the judgment against the company shall be arrested. The judgment amounts shall be considered as debts on the company which the

liquidator shall assume settlement thereof according to priorities and guarantees which he has. The dissolution of the company shall not result in termination of contracts of real estate's lease in which it exercise its activities.

### Article 47

#### Payment of Debts

The liquidator shall pay the debts to the creditors according to their order and if are equal in one order and the result of the liquidation is not sufficient to pay all their dues in full. The distribution thereof shall be according to percentages of those dues. The liquidator shall keep away the amounts necessary for payment of dues of the delayed creditors whenever their dues are fixed and of limited amount.

If it appeared to the liquidator that the company funds are not sufficient to pay its due debts, he should invite the partners to take the necessary decisions including entry into protective reconciliation with creditors or recourse to the competent Court for bankruptcy declaration.



## Text 44

### Article 48 Distribution of Liquidation Result

The result of liquidation shall be distributed after reimbursement of the financial shares to partners each according to his share in the profits. The partners may reimburse the movable and real estate properties which they have offered as shares in the company, if those properties are still maintaining their identity without modification or transformation and they shall have to pay the value difference if necessary.

### Article 49 Meeting of Partners at the End of Liquidation

Before completion of his assignment, the liquidator must convene the partners meeting in order to agree on completion of liquidation, adoption of its final accounts and liquidator's acquaintance. The partners meeting shall be inform of an ordinary general assembly as per terms and conditions to be required by the legal form of the company. The liquidator shall have the right to discuss and vote if he is a partner.

If the meeting of partners is difficult or if the company interest requires getting along without this meeting a recourse may be made to the president of the competent Court of the First Instance to be a decision of approval on liquidation accounts and adoption of the completion.

### Article 50 Striking the Company off the Commercial Register

The liquidator must strike the company off the Commercial Register and publish the same according to the Law.

## Section Two Commercial Companies

### Branch One Individual's Companies

#### First: Joint Liability Company

### Article 51 Definition

All the partners in joint liability company are responsible jointly and severally for company obligation and any agreement contrary thereto shall not be applied against a third party. The partner's rights in the company shall be in from of shares.

### Article 52 Company Name

The joint-liability company must have a trade name, so that the trade name shall include the partner's name of one of them with expression of (and co-partners). The expression of (joint liability company) must be added to the name which shall be selected.

### Article 53 Rules Ought to be Applied to the Joint Liability Company

The provisions provided for in the following article shall be applied to the joint liability company, and in default of a provision, the provisions of the civil law regarding the limited companies shall be applied.

#### مادة (48)

##### توزيع ناتج التصفية

يُوزَع ناتج التصفية بعد استرجاع الحصص المالية على الشركاء ، كلٌ حسب نصيبه في الأرباح ، ويجوز للشركاء استرجاع الأموال المنقولة والعقارية التي قدّموها حصصاً في الشركة إذا كانت تلك الأموال ما زالت مُحَفَظَةً بذاتيتها ، ولم يلحقها تغيير أو تحويل ، وعليهم دفع فرق القيمة إن كان له مُقتضى .

#### مادة (49)

##### اجتماع الشركاء في نهاية التصفية

يجب على المصفي قبل انتهاء مهمته أن يدعو الشركاء للاجتماع للموافقة على انتهاء التصفية ، وإقرار حساباتها الختامية ، وإبراء ذمة المصفي ، ويكون اجتماع الشركاء في هيئة جمعية عمومية عادية بحسب الأوضاع والشروط التي يتطلبها الشكل القانوني للشركة ، وللمصفي إن كان شريكاً الحق في المناقشة والتصويت .

ويجوز في حالة تعذر اجتماع الشركاء ، أو إذا تطلبت مصلحة الشركة الاستغناء عن هذا الاجتماع اللجوء إلى رئيس المحكمة الابتدائية المختصة لاتخاذ قرار بالموافقة على حسابات التصفية ، وإقرار إنهائها .

#### مادة (50)

##### شطب الشركة

يجب على المصفي القيام بشطب قيد الشركة من السجل التجاري ، ونشر ذلك وفقاً للقانون .

##### الفصل الثاني

##### الشركات التجارية

##### الفرع الأول

##### شركات الأشخاص

##### أولاً : شركة التضامن

#### مادة (51)

##### تعريف

كل الشركاء في شركة التضامن مسؤولون بوجه التضامن والتكافل عن التزامات الشركة ، وكل اتفاق يخالف ذلك لا يسري في مواجهة الغير ، وتكون حقوق الشركاء في الشركة في شكل حصص .

#### مادة (52)

##### اسم الشركة

يجب أن يكون لشركة التضامن اسم تجاري ، بحيث يشمل الاسم التجاري أسماء الشركاء أو أحدهم مع عبارة (وشركاؤه) ، ويجب إضافة عبارة (شركة تضامن) إلى الاسم الذي تم اختياره .

#### مادة (53)

##### القواعد الواجب تطبيقها على شركة التضامن

تُطَبَّق على شركة التضامن الأحكام المنصوص عليها في المواد التالية ، وإذا لم يوجد نصٌ طُبِّقَت أحكام القانون المدني الخاصة بالشركات البسيطة .

## Text 45

<p><b>مادة (54)</b> <b>عقد التأسيس</b></p> <p>يجب أن يحتوي عقد تأسيس الشركة على البيانات التالية :</p> <ol style="list-style-type: none"> <li>1. اسم ولقب كل شريك ، واسم أبيه ، وموطنه ، وجنسيته ، وتاريخ ميلاده ، ورقم هويته .</li> <li>2. اسم الشركة .</li> <li>3. اسم الشخص وأسماء الأشخاص - من الشركاء أو غيرهم - المنوطة بهم إدارة الشركة وتمثيلها القانوني .</li> <li>4. مقر الشركة ومركزها الرئيسي .</li> <li>5. أغراض الشركة .</li> <li>6. حصّة كل شريك وقيمتها .</li> <li>7. بيان ما يلتزم به الشريك الذي يُقدّم حصته عملاً .</li> <li>8. القواعد الواجب اتباعها لتوزيع الأرباح ومقدار نصيب كل شريك في الأرباح والخسائر .</li> <li>9. مدّة الشركة .</li> <li>10. الوضع الذي تؤوّل إليه الشركة في حالة انعدام أو نقص أهليّة الشريك ، أو إشهار إفلاسه .</li> </ol>	<p><b>مادة (55)</b> <b>قيّد الشركة</b></p> <p>يقوم المديرون بإيداع عقد الشركة ونظامها الأساسي في مكتب السجل التجاري الذي يقع مركز الشركة الرئيسي في دائرته ، وذلك خلال ثلاثين يوماً من تاريخ التوقيع على العقد .</p> <p>وإذا تخلف المديرون عن إيداع العقد خلال المدّة المذكورة في الفقرة السابقة حتّى لكان شريك أن يقوم بذلك على حساب الشركة ، أو أنّ يستصدر من القضاء أمراً يلزم المديرين بالقيام بذلك ، ويلزم أيضاً بالإيداع محرّر العقود الذي وضع عقد التأسيس في ورقة رسمية .</p> <p><b>مادة (56)</b> <b>تصرفات الشركاء</b></p> <p>تُنظّم أحكام القانون المدني الخاص بالشركات البسيطة العلاقات بين الشركاء والغير مع إبقاء مسؤوليّة جميع الشركاء بالتضامن والتكافل ، وذلك إلى أن يتمّ قيدها في السجل التجاري ، ومع ذلك فكلّ شريك تصرف باسم الشركة يُقرض قانوناً أنه له تمثيلها حتّى أمام القضاء ، والاتفاقات التي تُخوّل أحد الشركاء فقط تمثيل الشركة أو التي تحدّ من سلطة بعضهم في تمثيلها لا تُعتبر نافذة في حقّ الغير ما لم يثبت أنّ الغير كان على علم بها .</p>
---	--

<p><b>مادة (57)</b> <b>تمثيل الشركة</b></p> <p>للمدير المناط به تمثيل الشركة الحقّ في القيام بعمل كلّ ما يدخل ضمن أغراضها إلا ما استثناءه عقد التأسيس أو التوكيل الممنوح له ، ولا يجوز التمسك بهذه الاستثناءات قبل الغير ما لم تُقيّد في السجل التجاري ، أو ما لم يُثبت أنّ الغير كان على علم بها .</p> <p>ويجب على المديرين الذين يُمثّلون الشركة أن يودعوا مكتب السجل التجاري نماذج من توقيعاتهم الخطيّة خلال عشرة أيّام من تاريخ علمهم بالتعيين .</p>
--

### Article 54 Memorandum of Association

The memorandum of association of the company should contain the following data:

- 1- Name, surname of each partner, his father name, country, nationality, date of birth and identity number.
- 2- Company name.
- 3- Names of partners entrusted with the management and representation of the company.
- 4- Company's headquarters and main office.
- 5- Company purposes.
- 6- Share of each partner and its value.
- 7- Statement of what is to be abode by the partner who shall provide work instead of his shares.
- 8- Rules to be followed in distribution of profits and the amount of share of each partner in profits and losses.
- 9- Company duration.
- 10- Position to which the company shall pass in case of lack or shortage in partner's qualification or declaration of his bankruptcy.

### Article 55 Company Registration

The managers shall lodge the company's memorandum and articles of association with the Commercial Register Office which the head Office of the Company falls under its jurisdiction within thirty days from the date of signing the memorandum of association.

If the directors delay in lodging the memorandum within the duration set out in the previous paragraph, each partner shall have the right to do so at the company expenses or to issue a judicial order obliging the directors to do so and obliging also the notary public who put the memorandum of association on formal paper to lodge the same.

### Article 56 Partners Dispositions

The provisions of the civil law regarding the limited partnerships shall organize the relations between the company and third parties, with maintenance of responsibility of all the partners jointly and severally until the same is registered in the Commercial Register. However, any partner disposed in the company name shall legally suppose to represent it even before the jurisdiction. The agreement that entitle one of the partners only to represent the company or which limit the power of representation of some of them shall not be considered effective in respect of a third party unless its approved that the third party has knowledge thereof.

### Article 57 Company Representation

The manager who is entitled to represent the company shall have the right to perform what is included in its purposes, save what is excepted by the memorandum of association or the power of attorney granted to him. These exceptions should not be stuck to against the third party unless registered in the Commercial Register or unless proved that the third party has knowledge thereof.

The Directors who represent the company should lodge specimens of their written signatures with the Commercial Register Office within ten days from the date of their knowledge of the nomination.

## Text 46

<p><b>مادة (58)</b> <b>عزل المدير</b></p> <p>إذا كان مدير الشركة شريكاً فيها ومعيناً في عقد تأسيس الشركة بتلك الصفة ، فلا يجوز عزله من إدارتها إلا بموافقة جميع الشركاء ، أو بقرار من المحكمة ، وأما إذا كان شريكاً فيها ولكنه مُعين بتلك الصفة بموجب عقد خاص مستقل عن عقد الشركة فيجوز عزله من إدارتها بقرار صادر عن أكثرية الشركاء الآخرين فيها ، إلا إذا نصّ عقد الشركة على غير ذلك .</p> <p><b>ولا يترتب على عزل مدير الشركة في أيّ من الحالتين المسابقتين فسخ عقد الشركة .</b></p>
<p><b>مادة (59)</b> <b>حالات فصل الشريك</b></p> <p><b>لا يجوز للشركاء في شركة التضامن إخراج أيّ منهم من الشركة إلا بقرار من المحكمة بناءً على طلب أيّ من الشركاء إذا ثبت في حقّ الشريك المراد إخراجه حالة من الحالات المنصوص عليها في عقد الشركة ن أو تلك التي يُبيح فيها القانون فصل الشريك .</b></p>
<p><b>مادة (60)</b> <b>فروع الشركة</b></p> <p><b>يجب إيداع صورة طبق الأصل من عقد تأسيس الشركة في مكتب السجل التجاري بالجهة التي تُنشئ الشركة فروعاً فيها ، وذلك في ظرف عشرة أيام من إنشاء تلك الفروع .</b></p> <p><b>ويُذكر في هذه الصورة اسم مكتب السجل التجاري الذي قيّدت فيه الشركة وتاريخ القيد ، كما يجب أن تودع في مكتب السجل التجاري الذي يقع في دائرته الفرع نماذج من التوقيع الخطي لممثلي الشركة المعتمد للفرع .</b></p>
<p><b>مادة (61)</b> <b>قيد التغييرات</b></p> <p><b>يجب على المديرين أن يطلبوا في ظرف عشرة أيام من مكتب السجل التجاري المُختصّ قيد التغييرات الطارئة على عقد التأسيس ، والوقائع الأخرى الواجب قيدها .</b></p> <p><b>وإذا كان تغيير عقد التأسيس نتيجة لقرار اتخذته الشركاء وجب إيداع صورة رسمية من ذلك القرار .</b></p> <p><b>والتغييرات التي تُدخل على عقد الشركة لا تكون نافذة في حقّ الغير ما لم يتمّ قيدها .</b></p>
<p><b>مادة (62)</b> <b>حظر المنافسة</b></p> <p><b>لا يجوز للشريك دون موافقة باقي الشركاء أن يُمارس لحسابه الخاص أو لحساب غيره نشاطاً يتعارض مع نشاط الشركة ، أو أن يكون شريكاً متضامناً متكافلاً في شركة أخرى تُنافسها ، ويُفترض حصول الموافقة إذا كانت ممارسة النشاط أو الاشتراك في شركة منافسة سابقين على عقد ، الشركة وكان الشركاء على علم بذلك .</b></p> <p><b>وإذا أخلّ الشريك بذلك حُقّ للشركة فصل الشريك ، والمطالبة بالتعويض عن الأضرار .</b></p>

### **Article 58** **Removal of the Manager**

If the company manager is a partner therein and nominated in the company's memorandum of association in this capacity, he may not be removed from its management except by consent of all the partners or by a decision of the Court. But if he is a partner therein but nominated in that capacity under special contract independent from company's memorandum, he may be removed from its management by a resolution to be issued by the majority of other partners, unless the company memorandum provides for otherwise.

### **Article 59** **Cases of Dismissal of a Partner**

The partners in joint liability company should not remove any of them from the company except by a resolution from the court based on request one of the partners if one of the cases provided for in company's memorandum of association or those in which the law allows for dismissal of the partner is ascertained against the partner.

### **Article 60** **Company's Branches**

A true copy of the company's memorandum of association should be lodged with Commercial Register Office of the authority in which the company shall establish branches, within ten days from establishing those branches.

In the copy the name of the Commercial Register office in which the company is registered and the date of registration should be laid down. Specimens of the written signature of the company representative approved for the branch should also be lodged in the Commercial Register Office in jurisdiction of which the branch is located.

The company shall advise the Commercial Register Office within the jurisdiction of which the company head office is located, if the establishment of the branch within the above-mentioned period.

### **Article 61** **Registration of Variations**

The directors should apply, within ten days, to the concerned Commercial Register Office for registration of emergent variation to the memorandum of association and other facts which should be registered.

If change of memorandum of association is due to a resolution taken by the partners a formal copy of the resolution should be lodged.

Variations to be introduced to the memorandum of association of the company shall not be effective against the third parties unless registered.

### **Article 62** **Prohibition of Competition**

The partner may not, without consent of the remaining partners, exercise to his creditor to the credit of another person an activity contrary to company activity or to be jointly or severally a partner in other competitor company. It is supposed that approval must be obtained if the exercise of the activity or participation in competitor company antecedent to the company's memorandum of association and the partners were at knowledge thereof.

If the partner violated thereof, the company shall have the right to dismiss the partner and shall claim compensation for the damages.

## Text 47

<p><b>مادة (122)</b> <b>منع تبادل الاكتتاب بالأسهم</b> لا يُسمح للشركة أن تُكوّن رأس مالها ، ولا أن تزيد بواسطه تبادل الاكتتاب بالأسهم بينها وبين شركة أخرى ولو بواسطة أشخاص آخرين .</p> <p><b>مادة (123)</b> <b>المشاركات</b> لا تخول الشركة حق المشاركة في أعمال شركات أخرى حتى ولو أباح ذلك عقد التأسيس بوجه عام إذا كانت المشاركة تؤدي عملياً إلى تغيير غرض الشركة المنصوص عليه في عقد التأسيس تغييراً جوهرياً ما لم يكن ذلك بقصد تكوين شركة قابضة .</p> <p>ومع ذلك يجوز للشركة أن تمتلك أسهماً في شركة أخرى تمارس نشاطاً مختلفاً لنشاطها على ألا تتجاوز نسبة تلك المساهمة عشرة في المائة من رأس مال الشركة الأخيرة ، وإذا كانت الشركتان تمارسان نفس النشاط جاز تجاوز النسبة السابقة .</p> <p><b>مادة (124)</b> <b>رهن الأسهم</b> في حالة رهن الأسهم أو الشهادات المؤقتة يكون للدائن المرتهن حق قبض الأرباح ، واستعمال الحقوق المتصلة بالسهم بما في ذلك حضور اجتماعات الجمعية العمومية العادية ، والاشتراك في مداولاتها ، وحق الاختيار فيها ، ما لم يتفق في عقد الرهن على خلاف ذلك .</p> <p>ويحتفظ مالك الأسهم بحق الاختيار في الجمعية العمومية غير العادية .</p> <p><b>مادة (125)</b> <b>مساهم واحد</b> مع عدم الإخلال بالأحكام المنظمة للشركات القابضة، إذا لم تغف الشركة بالتزاماتها التي نشأت خلال الفترة التي كانت الأسهم في يد شخص واحد ، اعتبر هذا الشخص مسؤولاً عن تلك الالتزامات مسؤولية غير محدودة .</p> <p><b>ب - الأسهم الممتازة</b> <b>مادة (126)</b> <b>إصدار أسهم ممتازة</b> تُعطي الأسهم لأصحابها حقوقاً مالية وغير مالية متساوية، ومع ذلك يجوز إصدار أسهم تخول أصحابها حقوقاً مختلفة سواء بمقتضى عقد التأسيس ، أو بناءً على تعديلات تدخل عليه فيما بعد .</p> <p><b>مادة (127)</b> <b>الأفضلية في توزيع الأرباح</b> يجوز أن يكون لبعض أسهم الشركة أفضلية في توزيع الأرباح بأن تستحق نسبة معينة من الأرباح ، وذلك بالشروط وفي الأوقات التي يُحددها النظام الأساسي ، كما يجوز أن يكون له حق الأولوية في استيفاء أرباحها عن أي سنوات لم توزع فيها الأرباح ، بالإضافة إلى الربح المقرر لها في تلك السنة المالية .</p> <p><b>مادة (128)</b> <b>محدودية حق الاختيار</b> لا تتمتع الأسهم الممتازة المنصوص عليها في المادة السابقة بحق الاختيار في الجمعية العمومية العادية ، ما لم ينص النظام الأساسي على غير ذلك .</p> <p>وإذا لم يتلق حامل السهم أرباحاً خلال ثلاث سنوات متتالية ، عاد لهذه الأسهم حق الاختيار .</p>
---

### Article 122 Prevention of Exchange of Subscription

The capital of the company shall neither be allowed to be established nor to be increased by exchange of subscription by shares between it and another company even by other persons.

### Article 123 Participations

The company shall not be entitled to participate in works of other companies even if the same is allowed by the memorandum of association in general manner if the participation shall practically lead to essential change in company purpose provided for in the memorandum of association unless the same is intended for formation of a holding company.

However, the company may own shares in other company exercising an activity different from its activity, provided that the percentage of that shareholding shall not exceed ten (10) percent of the capital of the latter company. If the two companies exercise the same activity, the previous percentage may be exceeded.

### Article 124 Giving the Shares in Pledge

In case giving the shares or the provisional certificates in pledge, the pledger creditor shall have the right to receive the profits and utilize the right to receive the profits and utilize the rights related to the share, including attendance of ordinarily General Assembly meetings and participation in their deliberations and the right of selection therein unless otherwise agreed in the pledging contract.

The share owner shall reserve the right of selection in extraordinary General assembly.

### Article 125 One Shareholder

Without prejudice to the provisions governing the holding companies, if the company did not meet its obligations arising out during the period in which the shares were in the hand of one person, such person shall be unlimitedly responsible for those obligations.

### A- Preferred Shares

#### Article 126 Issue of Preferred Shares

The shares give their owners equal financial and non-financial rights. However, it is allowable to issue shares entitling their owners with different rights either under the memorandum of association or according to amendments to be introduced thereto afterwards.

### Article 127 Preference is Distribution of Profits

Some shares of the company may have preference in distribution of the profits by being entitled to a certain percentage of the profits on conditions and dates to be defined by the articles of association. They shall also have the right of priority in payment of their profits for any years in which the profits were not distributed in addition to the profit decided thereto in that fiscal year.

### Article 128 Limitation of Selection Right

The preferred shares provided for in the previous article shall not enjoy the right to selection in the ordinary General Assembly unless the articles of association provides otherwise.

If the shareholder did not receive profits during three successive years. The right to selection shall return to such shares.



## Text 48

<p><b>مادة (129)</b> <b>نسبة الأسهم الممتازة</b> لا يجوز أن تتعدى نسبة الأسهم الممتازة محدودة الاختيار نصف رأس مال الشركة . وإذا تجاوزت طلبات المساهمين على الأسهم الممتازة النسبة المنصوص عليها في الفقرة السابقة ، مُنح المساهمون أسهماً ممتازة كل حسب نسبة مساهمته في الشركة .</p> <p><b>مادة (130)</b> <b>تحول الأسهم</b> يجوز أن ينص النظام الأساسي للشركة على قابلية تحول أو استبدال أي نوع من الأسهم الصادرة عنها إلى أي نوع آخر يطلب من المساهم وموافقة الشركة ، وذلك وفق النسب والكيفية المحددة في النظام الأساسي .</p> <p><b>مادة (131)</b> <b>الجمعيات الخاصة</b> في حالة وجود أنواع مختلفة من الأسهم يجب أن يوافق أصحاب تلك الأسهم مجتمعين في جمعية خاصة بهم على ما تتخذه الجمعية العمومية من قرارات إذا كان من شأن تلك القرارات المسلس بحقوقيهم ، وتراعى في شأن صحة انعقاد الجمعيات الخاصة وقراراتها القواعد المنظمة للجمعيات غير الاعتيادية .</p> <p><b>ج - تداول الأسهم</b> <b>مادة (132)</b> <b>حظر تداول الأسهم</b> لا يجوز تداول الأسهم إلا بعد نشر الميزانية السنوية المعتمدة وحساب الأرباح والخسائر عن مدة لا تقل عن سنة . واستثناء من حكم الفقرة السابقة يمكن أن يتم بطريقة الحوالة نقل ملكية الأسهم فيما بين المساهمين .</p> <p><b>مادة (133)</b> <b>وقف تسجيل انتقال الأسهم</b> يجوز لمجلس الإدارة أن يوقف تسجيل انتقال الأسهم خلال المدة الواقعة بين تاريخ الدعوة لاجتماع الجمعية العمومية وتاريخ انعقادها .</p> <p><b>مادة (134)</b> <b>منع الشركة من منح قروض على أسهمها</b> لا يجوز للشركة أن تدفع مقدماً شيئاً مضموناً بأسهمها ، ولا أن تقرض الغير مالا إذا كان الغرض منه شراء أسهمها به .</p> <p><b>مادة (135)</b> <b>التصرف في الأسهم الاسمية</b> أسهم الشركة قابلة للتداول ، ومع ذلك لا يعتبر بيع الأسهم الاسمية أو الشهادات المؤقتة سارياً في حق الشركة أو الغير ، إلا إذا دُون في السجل الخاص بذلك . ويكون التسجيل بحضور المتعاقدين أو من يمثلهم ، ومنسوب عن الشركة ، وللشركة أن ترفض تسجيل البيع في الأحوال التالية : 1. إذا كانت الأسهم مرهونة أو محجوزة عليها بقرار من المحكمة . 2. إذا كانت الأسهم أو الشهادات المؤقتة مفقودة ، ولم تعطى بدلاً منها شهادات أو أسهم جديدة . 3. إذا كان البيع أو نقل الملكية مخالفاً للقانون ، أو عقد التأسيس ، أو النظام الأساسي للشركة . 4. إذا كان للشركة دين على المساهم ، فلها أن توقف تسجيل بيع أسهمه إلى أن يُسدّد دينه بالكامل . كما يمكن تداول الأسهم بطرق التعامل المعلوماتي (الالكتروني) بالصورة التي ينظمها القانون .</p>	
--	--

### Article 129 Percentage of the Preferred Shares

The percentage of the preferred shares of limited selection shall not exceed half the capital of the company.

If the application of the shareholders for preferred shares exceeded the percentage provided for in the previous paragraph, the shareholder shall be granted preferred shares each according to his shareholding in the company.

### Article 130 Transfer of Shares

The company articles of association may provide for transferability or replacement of any class of shares issued thereunder into another class by a request of the shareholder and company approval according to the percentages and the method defined in the articles of association.

### Article 131 Special Assemblies

If there are different classes of shares, the owners of such shares collectively in their respective special assembly shall agree on the resolutions to be taken by the General Assembly if those resolutions prejudice their rights. In the respect of validity of holding of the special assemblies and their resolutions, the rules governing the extraordinary Assemblies shall be respected.

### **B- Shares Circulation**

### Article 132 Prohibition of Shares Circulation

The shares may not be circulated except after publication of the approved annual balance sheet, profits and losses accounts for a period not less than one year.

With exception of provision of the previous paragraph, the ownership of shares may be affected by transfer between the shareholders.

### Article 133 Suspension of Registration of Transfer of Shares

The Board of Directors may suspend registration of transfer of shares during the period between the date of convening the General Assembly meeting and the date of its holding.

### Article 134 Prevention of the Company from Granting Loans on its Shares

The company may neither pay in advance any guaranteed thing in its name nor lend funds to a third party if the purpose thereof is to purchase its shares thereby.

### Article 135 Disposal over Nominal Shares

The company shares are transferable, however, the sale of the nominal shares or provisional certificates shall not be applicable to the company or third party's right unless if written down in special register.

Registration shall be in presence of the contracting parties or their representatives and company representative. The company may reject registration of the sale in the following cases:

- 1- If the shares are pledged or detained by court resolution.
- 2- If the shares or the provisional certificates are lost and no new certificates or shares are given in substitute.
- 3- If the sale or transfer of ownership is contrary to the Law or the memorandum of association or the articles of association of the company.
- 4- If the company has a debt on the shareholder, it shall have the right to suspend registration of sale of his shares, until full payment of his debt.

The share may also be circulated by informatics dealing (electronic) in the manner to be organized by the law.

## Text 49

**مادة (136)**  
المسؤولية عن التصرف في الأسهم التي لم تُدفع قيمتها  
من نقل أسهما لم تُدفع قيمتها بالكامل لآخرين يكون مسؤولاً معهم عن أداء  
الأقساط التي لم تُدفع ، وذلك لمدة ثلاث سنوات اعتباراً من تاريخ الانتقال .  
ولا تجوز مطالبة من تصرف في الأسهم بتسديد الأقساط إلا إذا أخفقت مطالبة  
حائز الأسهم بذلك .

**مادة (137)**  
قيود على تداول الأسهم  
فيما عدا حالات الميراث يجوز أن يكون انتقال الأسهم إلى الغير خاضعاً لموافقة  
مجلس الإدارة ، إذا نص العقد أو النظام الأساسي على ذلك ، وفي هذه الحالة يجب أن  
يتضمن طلب الحصول على الموافقة اسم أو أسماء المحال لهم الأسهم وعدد الأسهم ،  
المراد انتقالها ، والثمن المتفق عليه .

**مادة (138)**  
موافقة الشركة  
تكون موافقة الشركة صريحة أو ضمنية ، وذلك بمضي ستين يوماً من تاريخ  
تقديم طلب الموافقة على نقل الأسهم .  
وإذا لم توافق الشركة على انتقال الأسهم ، وجب على مجلس الإدارة أن يجد  
خلال تسعين يوماً من تاريخ تبليغ الرفض مشترياً آخر من المساهمين أو الغير ، كما  
يجوز لمجلس الإدارة العمل على أن تشتري الشركة تلك الأسهم من أجل تخفيض  
رأس المال فيما بعد بقيمتها .  
وإذا لم يتم الاتفاق على الثمن ، يتولى تحديده خبير معين من رئيس المحكمة  
الابتدائية المختصة .  
وإذا انقضى الأجل المذكور في هذه الفقرة دون أن تجد الشركة مشترياً ، اعتبر  
ذلك موافقة على انتقال الأسهم .

**مادة (139)**  
سقوط حظر التداول  
تعتبر الشروط المتعلقة بالأفضلية أو الموافقة أو غيرها من القيود التي تحد من  
تداول الأسهم ملغاة في حالة التنفيذ على الأسهم بسبب عدم دفع قيمتها الاسمية ،  
أو إدراج الأسهم في سوق الأوراق المالية .

**مادة (140)**  
الموافقة على رهن الأسهم  
إذا وافقت الشركة على رهن الأسهم ، اعتبر ذلك موافقة مسبقة على انتقال  
الأسهم المرهونة إلى المشتري لها في حالة التنفيذ عليها .

**مادة (141)**  
شروط زيادة رأس المال  
يجوز بقرار من الجمعية العمومية غير العادية زيادة رأس مال الشركة ، ولا  
تجوز زيادة رأس المال بحصص نقدية ، إلا بعد أداء المساهمين قيمة رأس المال  
المكتتب فيه كاملاً .

ويجوز أن يُنص في عقد التأسيس على تخويل مجلس الإدارة صلاحية زيادة  
رأس مال الشركة مرة واحدة أو مرات عن طريق إصدار أسهم عادية في حدود مبلغ  
معين على ألا تتجاوز مدة هذه الصلاحية سنة من تاريخ قيد الشركة في السجل  
التجاري ، ويجوز تخويل هذه الصلاحية لمجلس الإدارة عن طريق تعديل يُدخل على  
عقد التأسيس أثناء قيام الشركة ، وتظل سارية لمدة سنة من تاريخ القرار القاضي به .  
ويجب قيد قرار مجلس الإدارة بزيادة رأس مال الشركة بالسجل التجاري  
المختص خلال عشرة أيام من تاريخ تحقق الزيادة .

### Article 136

#### Responsibility for Disposal over Shares which their Value is Unpaid

Anyone who transferred shares which their value is not paid in full to others he shall be responsible with them for payment of the unpaid installment for three years with effect from the date of transfer.

The shareholder who disposed over the share may not be asked to pay the installments except if claiming of the possessor of shares is failed.

### Article 137

#### Restrictions on Circulation of Shares

With exception of cases of succession, the transfer of shares to a third party may be subject to approval of the Board of Directors if the same is provided for by the memorandum of association. In this case the application for approval must include the name of names of the assignees, number of shares intended for transfer and the price agreed upon.

### Article 138

#### Approval of the Company

The Company approval shall be explicit or implicit after sixty days from the date of submission of application for approval to transfer the shares.

If the company did not approve transfer of the shares, the Board of Directors must find, within ninety days from the date of notification of rejection, another purchaser amongst the shareholders or a third party. The Board of Directors also may strive for purchasing of those shares by the company in order to reduce afterwards the capital by their value.

If agreement is not reached on the price, an expert to be nominated by the competent Court of the First Instance shall fix thereof. If the term indicated in this paragraph is ended without finding a purchaser by the company, it shall be considered as an approval for transfer of share.

### Article 139

#### Lapse of Circulation Prohibition

The conditions related to preference or approval or other restrictions limiting circulation of shares shall be considered cancelled in case of enforcement on shares due to non-payment of their nominal value or insertion of shares in financial stock market.

### Article 140

#### Approval for Giving Shares in Pledge

If the company agreed for giving shares in pledge, this shall be considered as a prior approval for transfer the shares given in pledge to their purchaser in case of enforcement thereof.

**Second: Amendment of the Capital**

**A- Capital Increase**

### Article 141

#### Conditions for Capital Increase

By a resolution of the extraordinary General Assembly, the company capital may be increased. The capital may not be increased by cash allotments except after full payment of the subscribed capital by the shareholders.

The memorandum of association may provide for authorization of the Board of Directors with power to increase the company capital once or more by issuing ordinary shares in the limits of a certain amount, provided that the duration of such power shall not exceed one year from the date of registration of the company in Commercial Register. This authorization may be empowered to the Board of Directors by an amendment to be introduced to the memorandum of association during existence of the company and shall remain in force for one year from the date of the resolution adjudicating thereof.

The resolution of the Board of Directors in respect of company capital increase should be registered in the concerned Commercial Register within ten days from the date of the increase realization.

## Text 50

### Article 1168

#### Reconciliation

The reconciliation proposal shall be considered acceptable if agreed upon by the majority of creditors who have the right of section in number and value. The judge shall issue the reconciliation judgment after confirming presence of the majority shown in the previous paragraph whenever he deems it appropriate and shall issue on an order for its implementation.

The Executive Regulations for Law No. (5) of 1426 PB (1997) as Amended by Law No.(7) of 1371 PD(2003) for Promotion of Investment of Foreign Capitals, Chapter One Fields of Investment and Consideration of the Relevant Applications

#### Article (4)

##### Documents Required for Investment

The applicant shall enclose with his file the following documents:

##### 1- Memo on the project indicating the following:

a) Value and nature of capital to be invested in the Great Jamahiriya,

estimated in a transferable currency or equivalent in Libyan currency at

the time of application.

b) Imported and local materials, if any to be used in the project.

c) Technical specifications of the project.

d) A time table specifying the investment project construction period.

e) Estimated national and foreign manpower for operation of the project.

2- Certificate of the investor's nationality, to be issued by the competent

body in his country with respect to natural persons.

3- Up to date official extract from Commercial Register in the country of origin of the juridical person

#### مادة (1168) الصلح

يُعد اقتراح الصلح مقبولا إذا وافقت عليه أغلبية الدائنين الذين لهم حق الاختيار عدداً وقيمة .  
ويحكم القاضي بالصلح بعد التثبت من توافر الأغلبية المبينة في الفقرة السابقة متى وجده مناسباً ويأمر بتنفيذه .

اللائحة التنفيذية للقانون رقم (5) لسنة 1426 ميلادية (1997 م) مسيحي ( المعدل بالقانون رقم (7) لسنة 1371 و.ر (2003 م) مسيحي ) في شأن تشجيع إستثمار رؤوس الأموال الاجنبية

#### الباب الأول

مجالات الاستثمار والنظر في طلباته

#### ( مادة 4 )

المستندات المطلوبة للاستثمار

: يجب على مقدم الطلب أن يرفق بطلبه المستندات التالية

1: مذكرة عن المشروع تضمن ما يلي

أ. قيمة رأس المال المراد استثماره في الجماهيرية العظمى وطبيعته ، مقوماً بإحدى

العملات القابلة للتحويل أو ما يعادلها بالعملة الليبية وقت تقديم الطلب

ب.المواد المستوردة- والمحلية ان وجدت، التي سيستخدمها في المشروع

ج. مواصفات المشروع الفنية

د. برنامج زمني يحدد مدة تنفيذ المشروع

هـ.تقديرات القوى العاملة الوطنية والأجنبية لتشغيل المشروع

شهادة تدل على جنسية المستثمر صادرة من الجهة المختصة في بلده بالنسبة

للشخص الطبيعي

مستخرج رسمي حديث من صحيفة القيد بالسجل التجاري في البلد الأصلي

للشخص الاعتباري

## Text 51

### مادة (11)

القيد في السجل الاستثماري

يتقدم الحاصل على الترخيص إلى مكتب السجل الاستثماري بطلب وفق النموذج

:- المعد من الهيئة للقيد في السجل مرفقاً بالمستندات الآتية

1. عقد التأسيس والنظام الأساسي للمشروع الذي يأخذ أحد الأشكال المحددة في .

المادة التاسعة من هذه اللائحة ، أو عقد التأسيس والنظام الأساسي للشركة الأم إذا

كان المشروع يأخذ شكل فرع لتلك الشركة مع قرار مجلس الإدارة بإنشاء الفرع

.وتعيين مديره العام ، ومثله القانوني في الجماهيرية العظمى

أما إذا كان المستثمر شخصاً طبيعياً فيكتفي بالبيانات المقدمة منه عند تقديم طلب

.الحصول على الترخيص بالاستثمار

2. وثيقة التفويض في الاختصاصات ، أو التوكيل بالإدارة الصادرة لمدير المشروع .

ومثله القانوني ، على أن تتضمن بياناً واضحاً باختصاصاته، ومدة

.صلاحية التفويض أو التوكيل

3. نموذج يحمل توقيع مدير المشروع ، أو مثله القانوني في الجماهيرية العظمى .

4. شهادة من الجهات المختصة ذات العلاقة بقيد بإدخال رأس مال المشروع أو .

.جزء منه إلى الجماهيرية العظمى

ويترتب على القيد في السجل الاستثماري كافة الآثار القانونية المترتبة على القيد في

السجل التجاري بما فيها ثبوت الشخصية الاعتبارية ، وبعد استيفاء كافة البيانات

والمستندات المحددة في هذه المادة ، يصدر مكتب السجل الاستثماري لصاحب

الشأن شهادة تثبت قيده بالسجل الاستثماري وفق النموذج الذي تعدده الهيئة لهذا

لغرض

### Article (11)

#### Registration in the Investment Register

The licensee shall submit to the Investment Register Office an application on the relevant Form prepared by the Board for recording him in the Register, together with the following documents: -

1- Memorandum & Articles of Association for the project which taking a status specified in Article (9) hereof or Memorandum & Articles of Association of mother company, if the project takes the form of branch for that Co., together with decision of Board of Directors for establishing the branch, and appointment of its General Manager and legal representative in the Great Jamahiriya.

If, however, the investor is a natural person, the data submitted thereby shall be sufficient for submission of the application for obtaining investment license.

2- Authorization document for function/power or power of attorney for management, as issued to the Project Manager or his legal representative, indicating clearly his powers & validity of authorization or power of attorney.

3- Specimen of signature of Project Manager or his representative in the Great Jamahiriya.

4- Certificate from relevant competent bodies, confirming bringing of the project capital or a part thereof into the Great Jamahiriya. Registration in the Investment Register shall involve all legal effects of registration in the Commercial Register, including proof of juridical personality .

After providing all data and documents specified in this Article, the Investment Register Office shall issue to the person concerned a certificate proving his registration in the Investment Register in accordance with the Form prepared by the Board for this purpose.



## Text 52

### مادة (3)

#### تقديم الطلبات

تقدم طلبات الاستثمار من صاحب الشأن أو من ينوب عنه إلى أمين اللجنة الشعبية لهيئة تشجيع الاستثمار على نموذج يتضمن الطلب البيانات التالية  
اسم مقدم الطلب وجنسيته وشكله القانوني ومقره الرئيسي -  
وصف عام للمشروع يتضمن على وجه الخصوص، المجال المراد -  
الاستثمار فيه ، والفترة الزمنية اللازمة لانتهاء من تنفيذ المشروع ، وبيان  
بطبيعة

المال المستثمر ومقداره ووحداته

ويجوز تقديم الطلبات عن طريق الملحقين التجاريين بمكاتب الأخوة  
والمكاتب الشعبية بالخارج أو من يقوم مقامهم وعلى هذه الجهات إحالة  
الطلبات فور تقديمها إلى الهيئة

### مادة (1359)

#### نفاذ القانون

يعمل بهذا القانون اعتباراً من تاريخ نشره في مدونة التشريعات،  
وعلى المعنيين تسوية اوضاعهم طبقاً لأحكامه خلال فترة ستة أشهر  
من تاريخ نشره

### المادة 1165

#### الهيئات والاجراءات التحفظية

يجوز أن توكل مهام القاضي المنتدب الى القاضي الجزئي الى الجهة التي  
يقع مقر عمل المفلس الرئيسي في دائرتها، ويكون تعيين هيئة الدائنين  
اختيارياً ويجوز عدم القيام بوضع الاختتام

## Article (3)

### Submission of Applications

The Applications for investment shall be submitted by the person concerned or his representative to the Secretary of People's Committee for the Libyan Foreign Investment Board on a special Form, containing the following data:

- Applicant's name, nationality, legal status and main domicile

- General description of the project, indicating specifically the proposed field of investment, and the necessary period for construction thereof, and nature, amount and units of invested capital.

The Applications may be submitted through the Commercial Attaches in the Fraternity and People's Bureaus abroad or their deputies. Such bodies shall refer the applications immediately on submission thereof to the Board.

### Article 1359

#### Effectiveness of the Law

This Law shall come into force with effect from the date of its publication in the legislations code and the concerned authorities shall adjust their positions according to its provisions during (6) six months from its publication.

### Article 1165

#### Bodies and precautionary measures

The assignments of the delegated judge may be entrusted to the judge of the summary justice of the authority which the main business office of the bankruptcy falls under its area of jurisdiction. The nomination of the creditors board shall be optional and the seals may not be put.

## Bibliography

- Abou Fares, M. A. (1978). *Al-Qadā fī Al-Islam*. Amman: Al-Aqsa Library.
- Asensio, R. M. (2003). *Translating Official Documents*. Manchester: ST Jerome.
- Aziz, Y. Y. (1993). Explicit and Implicit Reference in Arabic-English Translation. *Babel*, 39: (3), 129-150.
- Baamir, A. Y. (2010). *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia*. Surrey: Ashgate Publishing, Ltd.
- Baker, M. (1992). *In Other Words: A Course Book on Translation*. London: Routledge.
- Baker, M. (Eds.). (1998b/2005). *Routledge Encyclopedia of Translation Studies*. Corpora in Translation Studies. London and New York: Routledge.
- Barnstone, W. (1993). *The Poetics of Translations: History, Theory, Practice*. London: Yale University Press.
- Barthes, R. (1974). *S/Z* (R. Miller, Trans.). New York: Noonday.
- Bassnett, S. (1980-2014). *Translation Studies*. London: Routledge.
- De Beaugrande, R., & Dressler, W.U. (1981): *Introduction to Text Linguistics*. London: Longman.
- Bell, R. T. (1991). *Translation and Translating: Theory and Practice*. New York: Longman.
- Bennett, J. (1976). *Linguistic Behaviour*. Indiana: Hackett Publishing.
- Benson, J. D., & Greaves, W. S. (1973). *The Language People Really Use*. Agincourt, Canada: Book Society of Canada.
- Bhatia, V. K. (1983). *Genre: Language Use in Professional Settings*. London: Longman.
- Bhatia, V. K. (1983a). An Approach to Linguistic Study of Legal Documents. *Fachsprache*, 5(3): 89-109.
- Bhatia, V. K. (1983b). *An Applied Discourse Analysis of English Legislative Writing*. Birmingham: Language Studies Unit, University of Aston.
- Bhatia, V. K. (1987). Language of the Law. *Language Teaching*, 3, 227-234.
- Bhatia, V. K. (1993). *Analysing Genre: Language Use in Professional Settings*. New York: Longman Publishing.
- Bowers, F. (1989). *Linguistic Aspects of Legislative Expression*. Vancouver: University of British Columbia Press.
- Brook, G. L. (1973). *Varieties of English*. London: Macmillan Press.

- Brown, G., & Yule, G. (1983). *Discourse Analysis*. Cambridge: Cambridge University Press.
- Butt, P. (2006). *Modern Legal Drafting: A Guide to Using Clearer Language*. Cambridge: Cambridge University Press.
- Cao, D. (2007). *Translating Law*. Clevedon: Multilingual Matters.
- Catford, J.C. (1965). *A Linguistic Theory of Translation*. London: Oxford University Press.
- Coates, J. (1983). *The Semantics of the Modal Auxiliaries*. London: Croom Helm.
- Company, G. C. M. (1984). *Webster's Ninth New Collegiate Dictionary*. Springfield: Massachusetts.
- Coulson, N. J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Crabbe, V. (1998). *Legislative Drafting*. London: Cavendish Publishing Limited.
- Crystal, D. (1997/2003). *The Cambridge Encyclopedia of Language*. Cambridge: Cambridge University Press.
- Crystal, D., & Davy, D. (1969-1974). *Investigating English Style*. London: Longman.
- Danet, B. (1985). Legal Discourse. In T. A. V. Dijk (Eds), *Handbook of Discourse Analysis*, Vol 1, (pp. 273-291). London: Academic Press
- Darbelnet, J. (1979). Réflexions sur le Discours Juridique. *Meta*, 24(1), 26-34.
- Dickins, J., Hervey, S., & Higgins, I. (2002). *Thinking Arabic Translation*. London: Routledge.
- Eagleson, R. (1998). Plain Language: Changing the Lawyer's Image and Goals. *Scribes J. Leg. Writing*, 7, 119.
- Emery, P. G. (1989). Legal Arabic Texts: Implication for Translation. *Babel*, 35(1): 1-11.
- Farghal, M., & Shunnaq, T. (1992). Major Problems in Students' Translations of English Legal Texts into Arabic. *Babel*, 38(4): 203-210.
- Faruqi, H. S. (2006). *Faruqi's Law Dictionary: Arabic-English*. Beirut: Librairie du Liban.
- Firth, J.R. (1964). *The Tongues of Men and Speech*. London: Oxford University Press.
- Fowler, R. (1985). Power. In Dijk, T. A. V. (Eds), *Handbook of Discourse Analysis*, Vol 4, (pp. 43-60). London: Academic Press
- Gémar, J. C. (1980). La Langue Juridique, Langue de Spécialité au Québec: éléments de méthodologie. *The French Review*, 53(6), 880-893.
- Gémar, J. C. (1988). Traduction Juridique: Art ou Technique d'interprétation. *Meta*, 33(2), 305-319.
- Goldstein, T., & Lieberman, J. K. (2002). *The Lawyer's Guide to Writing Well*. Berkeley: University of California Press.
- Goodrich, P. (1986). *Reading the Law: A Critical Introduction to Legal Method and Techniques*. Oxford: B. Blackwell.

- Gouadec, D. (1990). Traduction Signalétique. *Meta*, 35(2), 332-341.
- Gregory, M. (1967). Aspects of Varieties Differentiation. *Journal of Linguistics*, 3 (2), 177-198.
- Gregory, M., & Carroll, S. (1978). *Language and Situation: Language Varieties and their Social Contexts*. London: Routledge and Kegan Paul.
- Gustafsson, M. (1984). The Syntactic Features of Binomial Expressions in Legal English. *Text*, 4, 123-141.
- Haeseryn, R. (1977). The Role of Specialised, Non-literary Translation in the Development of the Vocabulary of General and Specialised Language. *Babel*, 22(3), 103-106.
- Halliday, M. A. K. (1994). *An Introduction to Functional Grammar*. London: Edward Arnold.
- Halliday, M. A. K. (1970). Functional Diversity in Language as Seen from a Consideration of Modality and Mood in English. *Foundations of Language*, 6: 322 -361.
- Halliday, M. A. K., & Hasan, R. (1976). *Cohesion in English*. London: Longman.
- Halliday, M. A. K., & Hasan, R. (1985). *Language, Context and Text: Aspects of Language in a Social-Semiotic Perspective*. Melbourne: Deakin University.
- Hatim, B. (1997). *Communication Across Cultures: Translation Theory and Contrastive Text Linguistics*. Exeter: University of Exeter Press.
- Hatim, B., & Mason, I. (1990). *Discourse and the Translator*. London and New York: Longman.
- Hatim, B., & Shunnaq. A. (1995). *The Legal Translator at Work: Arabic-English Legal Translation: A Practical Guide*. Irbid, Jordan: Dar Al-Hilal.
- Hatim, B., Shunnaq A. & Buckley, R. (1995). *The Legal Translator at Work: A Practical Guide*. Irbid, Jordan: Dar Al-Hilal for Translating and Publishing.
- Haywood, J. A., & Nahmad, H. M. (1965). *Arabic Grammar of the Written Language*. London: Lund Humphries.
- Hervey, S., & Higgins, I. (1992). *Thinking Translation*. London: Routledge.
- Holes, C. (1995). *Modern Arabic: Structures, Functions, and Varieties*. New York: Longman.
- Holmes, O. W. (1899). The Theory of Legal Interpretation. *Harvard Law Review*, 12(6), 417-420.
- Huston, S. (2002). *Corpora in Applied Linguistics*. Cambridge: Cambridge University Press.
- Issa, A. J. (1997). *Translating English Legal Texts into Arabic: Contracts as a Case Study*. Baghdad: Al-Mustansiriyya University.
- Jakobson, R. (1959/2000). *Linguistic Aspects of Translation*. New York: Harvard University Press.

- Janin, H., & Kahlmeyer, A. (2007). *Islamic Law: The Sharia from Muhammad's Time to the Present*. London: McFarland & Co.
- Jarjis, S. M. (1992). Some Structural Aspects of Legal Arabic. *Adab Al-Rafidayn*, 23, 93-103.
- Kadi, S. (1987) *Binomials in English and Arabic: A Contrastive Study*. (Unpublished master's thesis). University of Bath, Bath, England.
- Kastberg, P. (2007). Cultural Issues Facing the Technical Translator. *Journal of Specialised Translation*, (8), 104-109.
- Kharma, N., & Hajjaj, A. (1989). *Errors in English among Arabic Speakers: Analysis and Remedy*. Harlow: Longman.
- Kingscott, G. (1998). Tribute to the Founder of Terminology, *Language Today*, 11, Nottingham: Language Publications.
- Kress, G. (1985). Ideological Structures in Discourse. *Handbook of Discourse Analysis*, 4(1), 22-42.
- Lambert, J., & Van Gorp, H. (1985). On Describing Translations. In T. Hermans (Eds.), *The Manipulation of Literature: Studies in Literary Translation* (pp. 42-53). London: Croom Helm.
- Larson, M. L. (1998). *Meaning-based Translation: A Guide to Cross-language Equivalence*. Lanham, Md: University Press of America.
- Layish, A. (1998). *Legal Documents on Libyan Tribal Society in Process of Sedentarization: The documents in Arabic with a Glossary of Arabic Legal Terms and Phrases*. Wiesbaden: Harrassowitz Verlag.
- Layish, A. (2005). *Sharī'a [ie Sharī'a] and Custom in Libyan Tribal Society: An Annotated Translation of Decisions from the Sharī'a [ie Sharī'a] Courts of Adjābiya [ie Ajdābiya] and Kufra*. Leiden: E.J. Brill.
- Lyons, J. (1966). Firth's Theory of Meaning. In C.E. Bazell et al. (Eds.), *In Memory of JR Firth* (pp. 105-113). London: Longman.
- Maley, Y. (1987). The Language of Legislation. *Language in Society*, 16(1), 25-48.
- Meredith, R. C. (1979). *Some Notes on English Legal Translation*. *Meta*, 24(1), 54-67.
- Mellinkoff, D. (1963). *The Language of the Law*. Boston: Little/Brown.
- Morris, M. (Eds.). (1995). *Translation and the Law* (Vol. 8). Amsterdam/ Philadelphia: John Benjamins Publishing.
- Munday, J. (2008). *Introducing Translation Studies: Theories and Applications*. London: Taylor and Francis.
- Newmark, P. (1981). *Approaches to Translation* (Vol. 1.). Oxford: Pergamon Press.
- Newmark, P. (1988/2005). *A Textbook of Translation*. Hertfordshire: Prentice Hall.

- Newmark, P. (1991). The Curse of Dogma in Translation Studies. *Lebende Sprachen*, 36(3), 105-108.
- Nida, E. A. (1964). *Towards a Science of Translating*. Leiden: E. J. Brill.
- Nida, E. A. (2001). *Contexts in Translating*. Amsterdam/Philadelphia: John Benjamins.
- Nida, E. A., & Taber, C.R. (2003). *The Theory and Practice of Translation* (Vol. 8). Leiden: Brill Academic Publishing.
- Nord, C. (1991). *Text Analysis in Translation. Theory, Methodology, and Didactic Application of a Model for Translation-Oriented Text Analysis*. Amsterdam/Atlanta: Rodopi.
- Palmer, F. (2001). *Mood and Modality*. Cambridge: Cambridge University Press.
- Reiss, K. (1977/1989). Text types, Translation Types and Translation Assessment (A. Chesterman, Trans.) (Eds.) (1989) *Readings in Translation Theory*. Helsinki: Finn Lectura.
- Robinson, D. (1997). *Becoming a Translator: An Accelerated Course*. New York: Routledge.
- Rodell, F. (1936). Goodbye to Law Reviews. *Va. L. Rev.*, 23, 38.
- Rodell, F. (1957). *Woe Unto You, Lawyers*. New York: Reynal & Hitchcock.
- Russell, R. (1979). The Statutes of Quebec: Linguistic Interference. *Meta*, 24(1), 213-217.
- Sabra, M. (2005). *Uṣūl Al-ṣiyāgha Al-qānūniyya*. Cairo: Dār Al-kutub Al-qānūniyya
- Sager, J. C. (1990). *A Practical Course in Terminology Processing*. Amsterdam/Philadelphia: John Benjamins Publishing.
- Salkie, R., Busuttil, P., & van der Auwera, J. (Eds.). (2009). *Modality in English: Theory and Description* (Vol. 58). Berlin: Walter de Gruyter.
- Šarčević, S. (1997/2000). *New Approach to Legal Translation*. The Hague: Kluwer Law International.
- Šarčević, S. (1985). Translation of Culture-Bound Terms in Law. *Multilingua*, 4(3), 127-133.
- Schäffner, C. (1997). Strategies of translating Political Texts. *Bejamins Translation Library*, 26, 119-144.
- Schwarz, H. (1977). Legal and Administrative Language. *Babel*, 23 (1), 19-22.
- Shen, D. (1985). Fidelity Versus Pragmatism. *Babel*, 31(3), 134-137.
- (1989). Literalism: Non Formal-equivalence. *Babel*, 35(4), 219-235.
- Shuttleworth, M. (2006). *Dictionary of Translation Studies*. Manchester: St. Jerome Publishing.
- Snell-Hornby, M. (1988). *Translation Studies: An Integrated Approach*. Amsterdam/Philadelphia: John Benjamins Publishing Company.

- Solan, L. (1990). Does the Legal System Need Experts in English Syntax?. *Annals of the New York Academy of Sciences*, 606(1), 107-118.
- Squire, L. B. (1982). *Legal Writing*. St Paul MN: West Publishing Co.
- Steiner, G. (1975/2013). *After Babel: Aspects of language and translation*. London, Oxford and New York: Oxford University Press.
- Stubbs, M. (1983). *Discourse Analysis: The Sociolinguistic Analysis of Natural Language* (Vol. 4). Oxford: University of Chicago Press.
- Taber, C. R. (1980). Sociolinguistic Obstacles to Communication through Translation. *Meta*, 25(4), 421-429.
- Thorne, S. (2008). *Mastering advanced English Language*. Basingstoke: Palgrave Macmillan.
- Tiersma, P. M. (1999). *Legal Language*. Chicago: University of Chicago Press.
- Toury, G. (1991). Experimentation in Translation Studies: Achievements, prospects and some pitfalls. In S. Tirkkonen-Condit (ed.), *Empirical Research in Translation and Intercultural Studies*. Tübingen: Narr.
- Trosborg, A. (1997). *Text Typology and Translation* (Vol. 26). Amsterdam: John Benjamins Publishing Company.
- Turner, G. W. (1973). *Stylistics*. Harmondsworth: Penguin books.
- Varó, E. A., & Hughes, B. (2002). *Legal Translation Explained*. Manchester: St. Jerome Publishing.
- Venuti, L. (1995). *The Translator's Invisibility: A History of Translation*. London: Routledge.
- Vermeer, H. (1989/2000). Skopos and commission in Translation Action. In L. Venuti (Eds.), *The Translation Studies Reader* (pp. 221-232). London: Routledge.
- Vinay, J. P., & Darbelnet, J. L. (1995). *Comparative Stylistics of French and English: A Methodology for Translation*. Amsterdam/Philadelphia: John Benjamins.
- Werlich, E. (1976). *A Text Grammar of English*. Heidelberg: Quelle and Meyer.
- Weston, M. (1983). Problems and Principles in Legal Translation. *The Incorporated Linguist*, 22(4), 207-11.
- Widdowson, H. G. (1979). Rules and Procedures in Discourse Analysis. *Explorations in Applied Linguistics*, 138-146.
- Williams, C. (2009, June). Legal English and the 'modal revolution'. In *Proceedings of the Second International Conference on Modality in English*. Berlin: Mouton de Gruyter (pp. 199-210).
- Wilss, W. (1985). Rhetorical and Stylistic Issues in Translation Pedagogy. *Meta*, 30(3), 224-235.

**Online References:**

Arabic Centre for Arabisation and Publication. Retrieved January 7, 2012 from <http://www.acatap.org>

Merriam Webster's Dictionary of Law. Retrieved June 13, 2012 from <http://www.merriam-webster.com/dictionary/law>

The Arabic Text of The Universal Declaration of Human Rights. Retrieved January 10, 2012 from <https://www.un.org/ar/documents/udhr/>

The English Text of The Universal Declaration of Human Rights. Retrieved January 10, 2012 from <https://www.un.org/en/documents/udhr/>

The Treaty of Taif, 1934 Retrieved January 01, 2013 from <http://www.albab.com/yemen/pol/int1.htm>

Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. Retrieved November 15, 2013 from <http://thelawdictionary.org>